UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/84
14 January 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 22 of the provisional agenda

RIGHTS OF THE CHILD

Sale of children, child prostitution and child pornography

Report submitted by Mr. Vitit Muntarbhorn, Special Rapporteur, in accordance with Commission on Human Rights resolution 1993/82

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Introduction

1. The mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography was first created in 1990 by the Commission on Human Rights for one year in its resolution 1990/68. The Economic and Social Council, in its decision 1990/240, confirmed the mandate and extended it to cover a period of two years. Accordingly, the Special Rapporteur submitted his annual reports (E/CN.4/1991/51 and E/CN.4/1992/55 and Add.1) to the Commission on Human Rights at its forty-seventh and forty-eighth sessions. In its resolution 1992/76, the Commission renewed the mandate for a further period of three years, which was approved by the Economic and Social Council in its decision 1992/244. The Special Rapporteur presented a further report to the Commission at its forty-ninth session (E/CN.4/1993/67). The present report covers the period from December 1992 to the beginning of December 1993.

2. During the period under consideration the Special Rapporteur carried out one country visit to Nepal at the kind invitation of the Government of Nepal. The findings of the mission are reflected in the addendum to the present report (E/CN.4/1994/84/Add.1). He had hoped to visit one other country during the year in another region of the world and at another level of economic development, to illustrate the fact that the issues under the mandate concern both developing and developed countries. However, it was not possible to organize the other visit owing to constraints of time and resources. It is hoped that in 1994 other visits will be possible, particularly to North America and Africa.

A. General comments

3. The increasing internationalization of the sale of children, child prostitution and child pornography is most disconcerting. Children are not only sold for these purposes at the national level, but they are also trafficked across frontiers far and wide. The problem transcends national frontiers and local jurisdiction. There is thus an urgent need for international cooperation to counter the illicit trade.

4. In other previous reports the Special Rapporteur addressed various considerations including poverty, the linkage between supply and demand, criminality, the chain effect of root causes, and the need for a pluridisciplinary approach to the problem. In the previous report (E/CN.4/1993/67) the following concerns were highlighted: transnationalization, technology, industrialization, security, crime, corruption and discrimination, all of which can have a negative impact on the lives of children.

5. The following considerations emerged consistently during the past year and deserve close attention.

1. Poverty plus other factors

6. Poverty was cited by many sources during the year as a key cause of the exploitation of children. While this is true to some extent, in the opinion of the Special Rapporteur poverty cannot be accepted as a pretext and justification for the exploitation of children, which may damage children

physically and mentally. Moreover, the poverty argument fails to take into account other elements which lead to the sale of children, child prostitution and child pornography. Poverty relates to the supply side of the problem. It does not explain the huge global demand, with, in many instances, customers from rich countries circumventing their national laws to exploit children in other countries. Sex tourism has spread its illicit wings wide, and paedophiles search for their victims in all parts of the globe. The problem is compounded by the criminal networks which benefit from the trade in children, and by collusion and corruption in many national settings.

7. It is thus poverty plus other factors, such as the role of customers and criminality, rather than poverty alone, which leads to the exploitation of children.

2. Structural adjustment

8. Many countries faced with the problem of the sale of children, child prostitution and child pornography are under pressure from international financial agencies to adjust their economic programmes. At times, the adjustment process fails to bear in mind sufficiently the needs of children and their families. Cut-backs in expenditure often have the greatest impact on the social services which affect the well-being of children and their families.

9. In this regard, it is salutary to note the concern expressed by the Committee on the Rights of the Child in 1993 in relation to the economic exploitation of children:

> "When analysing States' reports, the Committee noted that groups of children in both poor and rich countries have been victimized by sweeping measures to curb inflation and encourage economic growth. Social allocations have been cut in drastic proportion.
>
> "This has caused new poverty. Groups of vulnerable children, in particular, have been made to suffer: the girl child, the disabled, minority ethnic groups, orphans, displaced and refugee children.
>
> ...
>
> "The Convention on the Rights of the Child states that Governments should implement the economic, social and cultural rights of the child 'to the maximum extent of their available resources'. The Committee is not convinced that any Government fully lives up to that ambition today.
>
> "There is an urgent need for a discussion on how children can be protected in programmes of economic reform. International, regional and national financial institutions have a role to play in this endeavour." 1/

10. There is thus a call to all global, regional, bilateral and other financial institutions and aid agencies to adjust their own perceptions of structural adjustment programmes. They should cushion families and children against deprivation which may push families to discard their children and/or children to enter exploitative trades.

3. Arms expenditure and national budgets

11. Even in the poorest countries there is often a tendency to spend too much on arms purchases and too little on the development and protection of children. In this perspective, the argument advanced by many countries to explain the sale and trafficking of children on their territory, that they are "due to poverty", is not totally convincing. Much of the money spent on buying arms would be better spent on preventing and remedying the problems affecting children and their families.

12. The problem should be set in the context of global distortions. While many developing countries, which could otherwise be spending more of their national budgets on children, spend their money buying arms from abroad, it is generally the developed countries which benefit from the arms trade, since it is they or the private sector under their jurisdiction which supply such arms. In readjusting national budgets to reflect more the concerns of children and their families, both the demand and supply sides of the arms trade need to be addressed. This concerns equally the developing countries, often the demand factor, and developed countries, often the supply factor. 2/

4. Manifold discrimination

13. Discrimination, which rears its head in many quarters and in many forms, contributes to child exploitation. Gender discrimination was noted in the previous reports of the Special Rapporteur as resulting in the victimization of girl children. Precisely because the girl child is seen by many communities as having lower priority, she is often denied access to such basic necessities as education which could ultimately protect her from exploitation.

14. Another disquieting form of discrimination is based upon race and social origin, interwoven with issues of class and caste and the remnants of slavery. It has become increasingly obvious that many children used for labour and sexual exploitation are lured from particular racial or social groups, rather than from the well-endowed groups in power. In South Asia, it is the children of the "untouchables" who are most often victimized in child labour situations. Another case in point, drawn from the Special Rapporteur's field visit to Nepal, is that it is primarily girls from hill-tribe groups in that country who are tricked and sold into prostitution, both local and transnational. The pattern is repeated in other parts of the world, where the children of minorities, migrant workers and/or indigenous peoples, who are already marginalized, are often the main victims of such exploitation.

5. Physical and mental damage

15. Many discussions concerning the sale of children, child prostitution and child pornography fail to highlight sufficiently the fact that both physical and mental damage is often inflicted upon the children. For example, the fact that they are kept for hours in factories without exercise or proper lighting causes irreparable damage to children; and children sold into brothels are at risk of physical abuse, mental trauma and, ultimately, AIDS. Likewise, the damage inflicted on child soldiers is both physical and mental.

16. While it is evident that it is essential to build a system of community networks so as to ensure social and medical rehabilitation on a sustained and long-term basis for children released from these situations, the will and the resources are often lacking.

6. Variations in age criteria

17. The questions "who is a child?" and "what is the age criterion for the child?" were raised consistently during the past year. Although the Convention on the Rights of the Child establishes the age of 18 as the threshold between childhood and adulthood, national systems vary in the age criteria that they use in regard to the child. The age thresholds for protecting children from child labour and sexual exploitation differ markedly, as does the age criterion for child soldiers. In practice, the situation is compounded by the fact that many countries fail to register the births of children or to provide documents of such registration, thereby creating a group of stateless children unable to prove their age by means of written documents.

18. While many developing countries use 12 or 13 as the age under which employment is prohibited, it would be preferable to raise it in order to protect children from exploitation; 15 is the international standard. In regard to child soldiers, it would be better to raise the age criterion to 18 in view of the physical and mental trauma that arises from involvement in armed conflicts. In regard to the age of consent, which is often a determinant for differentiating between child prostitution and adult prostitution, in many countries it is set at well below 16, whereas a higher age criterion would afford more protection to children from sexual exploitation.

19. A disturbing trend during the past year has been the "reclassification" of many children as adults by some authorities and business interests so as to deprive them of the safety net of child protection laws and of the mandate of the Special Rapporteur. There have been reports of fake identification cards classifying children as over 18 whom medical examination would reveal to be under 18. On another front, in regard to transnational trafficking of children, officials of recipient countries sometimes claim all too readily that girls and boys sold for sex and the exploitation of their labour are over 18: this enables those officials to push the children back to the country of origin without anyone being held accountable and without independent monitoring or safeguards for their safety.

20. The "age nuance", which is manipulated for the benefit of various exploitative circles, needs to be countered by higher age thresholds, more independent assessments of the age of children, proper and accessible registration of birth and proof of status, protective laws and measures, and action to eliminate distortions and exploitation.

7. Family matters

21. 1994 is the International Year of the Family. The International Year is an extremely important opportunity to highlight the nexus between the child and the family in order to prevent the exploitation of children, as well as to provide remedies where such exploitation has occurred. The Year is also a timely reminder that there is a global crisis of the family breakdown caused by economic, social, environmental and other pressures, which is taking its toll on children. These pressures are aggravated by the physical and spiritual dislocation caused by continuing migrations and the ravages of displacement resulting from conflicts.

22. The United Nations Guide for a National Action Programme on the International Year of the Family rightly emphasizes a broad vision of the family based upon biological, social and/or psychological ties. It also calls for child protection laws and practices, as well as preventive and rehabilitative action based upon the following tenets: 3/

The establishment of bonds between spouses;

Procreation and sexual relations between spouses;

The guarantee of a name and status for children;

The basic care of children;

The socialization and education of children;

The protection of family members;

The provision of emotional care and recreation to family members;

The provision of services and resources to family members.

23. The non-governmental Committee on the International Year of the Family has provided the following exhortation in its guiding principles on the Year (art. 10):

> "1. All children shall enjoy the same social protection and rights and be given equal opportunity to develop their full potential.
>
> "2. All children should have fair chances to grow up in a family environment. In case they are deprived of their family environment, they shall be entitled to special protection and assistance." 4/

24. It is hoped that the International Year will call the world's attention to family matters and their interrelationship with the sale of children, child prostitution and child pornography.

B. Methodology

25. The study examines three specific issues: the sale of children, child prostitution and child pornography. Under the heading "sale of children", four topics are dealt with: the sale of children in relation to adoptions, child labour exploitation, human organ transplantation, and other forms of sale.

26. This is the fourth report to be submitted by the Special Rapporteur. The second report (E/CN.4/1992/55 and Add.1), submitted at the beginning of 1992, provided a substantive analysis of the issues at stake, supported by the replies to an extensive questionnaire sent to both Governments and the non-governmental sector in 1991, in addition to the findings of field trips to the Netherlands and Brazil. During the year covered by the second report the process of communicating with Governments directly to request action on human rights violations was also initiated. The third report (E/CN.4/1993/67) analysed the situation in 1992, in addition to presenting the findings of a mission to Australia. This fourth report concentrates on information received in 1993, and includes recent replies to the questionnaire circulated in 1991, where relevant, and the findings of a mission to Nepal.

27. During the course of 1993, the Special Rapporteur established direct contact with Governments and the non-governmental sector to seek updated information on the issues under the mandate. He also established closer cooperation with various international and intergovernmental organizations, including UNICEF, WHO, ILO and INTERPOL, to share information.

28. The Special Rapporteur attended the World Conference on Human Rights, held at Vienna in June 1993, and called for more commitment to counter the sale of children, child prostitution and child pornography. During the year, he briefed the Committee on the Rights of the Child on issues of concern to his mandate, with emphasis on the economic exploitation of children, the Committee's theme for the year. He also established key interchanges with the Working Group on Contemporary Forms of Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Many non-governmental organizations and individuals contributed information consistently as a basis for this study. Special thanks are conveyed by the Special Rapporteur to both the governmental and non-governmental sectors which have provided complementary support in this regard.

29. In relation to communications with Governments concerning allegations of human rights violations during 1993, the Special Rapporteur contacted an increased number of Governments requesting a response. The interchanges are provided in section IV of the present report. Regrettably, some Governments have not yet responded to the communications addressed to them.

I. SALE OF CHILDREN

30. Various definitional issues concerning the words "sale" and "child" were discussed in previous reports, and it is not intended to re-examine them here. Suffice it to note that the definition given in article 1 of the Convention on the Rights of the Child is as follows: "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".

31. The working definition of "sale of children" adopted by the Special Rapporteur is "the transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation". The categorization adopted by this mandate is fourfold: adoption for commercial purposes, exploitation of child labour, organ transplantation, and other forms of sale. The last category has been interpreted under this mandate to include, but not be limited to, abductions and disappearances, and child soldiers.

32. Despite various innovations in law-making noted below, at times the scenario has verged on the incredible in 1993. For example, in one case, the press reported that a destitute woman whose husband had deserted her sold her one-day-old baby for 75 cents. 5/ In another case, a singer who had incurred large gambling debts murdered his 11-year-old daughter so as to make money from selling her corpse. 6/

A. Adoption for commercial purposes

33. 1993 witnessed various welcome initiatives, particularly the finalization of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, to counter the sale of children for adoption for commercial purposes. However, the situation remained disconcerting, particularly in Eastern Europe and Central and South America, where there were continuing reports of the sale of children. There was a close linkage with abductions and disappearances. Technological advances in reproductive technology, such as in the areas of surrogacy and in vitro fertilization, provided continuing cause for concern.

1. International developments

34. The Convention on the Rights of the Child encapsulates many primary principles concerning adoption. It calls for authorization of the adoption by the competent authorities, exploration of adoption possibilities in the country of origin before the potential for intercountry adoption ("subsidiarity") is examined and action against "improper financial gain" (art. 21). The predominant principle is the best interests of the child. There has been nearly universal accession to the Convention; those States which have not acceded to it are urged to do so. The Committee on the Rights of the Child established under the Convention also plays a key role in monitoring all aspects of children's rights, including those concerning adoption.

35. The provisions of the Convention that are relevant to the Special Rapporteur's mandate have been strengthened by the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, adopted by the Commission on Human Rights in 1992. Although the Programme of Action is not limited to sale for adoption, certain of the measures it promotes are most pertinent to the issue. These include information campaigns to warn people about abuses; investigations to expose abuses; education to prevent, identify and expose abuses; improved legal measures and law enforcement, particularly to curb sale and trafficking by clients and intermediaries; social measures and development assistance for communities; rehabilitation and reintegration of victims who have been victims of abuse; international coordination and exchange of information through appropriate data banks. It highlights the following premises in regard to adoptions; intercountry adoptions should only take place through competent, professional and authorized agencies in both the country of origin and the receiving country; procedures for child birth registration and consent or renunciation by parents should be regulated by law; alternatives to intercountry adoptions, including the provision of support services to parents to enable them to keep their children, foster care and local adoptions, should be explored.

36. In 1993, Governments began to respond to the Programme of Action. However, their statements tended to provide a legalistic analysis rather than examples of practical problems of implementation. There was evidently a lack of dissemination of the Programme of Action in many settings.

37. The World Conference on Human Rights provided an additional impetus to counter child exploitation linked to the sale of children. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993, contained a call for universal ratification of the Convention on the Rights of the Child by 1995 and its effective implementation through the adoption of all the necessary legislative, administrative and other measures, and for strengthening programmes for the protection of children, in particular:

> "the girl child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies." 7/

38. A most significant development in 1993 was the finalization of the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption. It posits the need to help children remain with their biological parents. Where this is not possible, adoption should be considered, based upon the child's best interests. Local adoption should be explored first and, failing that, intercountry adoption; the "subsidiarity principle" now becomes the "subsidiarity rule". In this context, there is a need to regulate the operations of intermediaries, such as private adoption agencies, by ensuring that they are accredited and monitored by State authorities. The new Convention promotes the need for counselling facilities; assessment of the suitability of the adoptive parents; designation of a

central authority in each State to coordinate with other States parties; accreditation of intermediary organizations without profit motives; and mutual recognition of foreign adoptions. One commentator notes its benefits as follows:

> "It implements the best interests principle and creates a structure of protection and cooperation for that purpose. It implements the subsidiary principle and reinforces it. It provides for safeguards to give at least the same level of protection to intercountry adoptions that applies to national adoptions. It will help to prevent profit-making in a number of ways. It will help to combat child trafficking, abduction and sale of children. It provides a mechanism for cooperation which will help children who are searching for their roots in the country of origin and also provides general follow-up for the countries of origin on what happened to their children." 8/

39. This Convention concretizes further many concerns expressed in the Convention on the Rights of the Child, particularly in relation to profiteering:

> "[There is] not only a prohibition of obtaining 'improper financial or other gain' from an activity related to an intercountry adoption (as in the United Nations Convention) but also unusually precise restrictions on compensation: 'only costs and expenses, including reasonable professional fees may be charged or paid' and directors and staff or agencies concerned must not receive 'unreasonably high' remuneration." 9/

40. How effective the Convention will be will depend, to a large extent, upon how many countries ratify it and how it is implemented. Much also hinges on the designation of effective central authorities in each country to supervise the implementation process. However, if these authorities delegate too many of their functions to other agencies, their supervisory role will be weakened. Preferably they would work only with accredited agencies.

41. On a related front, in so far as the transfer of children may be linked with abductions, the Hague Convention on the Civil Aspects of International Child Abduction 1980 assists in tracing abducted children and facilitating their return. The Convention allows the police to intervene where the child is kidnapped, even in the absence of a court decision. A lacuna to be redressed in future is the limited number of States parties; there should be universal accession to this Convention.

2. National developments

42. Europe remained in the headlines throughout the year both in relation to supply of and demand for children for commercial adoptions. Several instances in Eastern Europe highlighted the clandestine market in various Eastern European countries as part of the supply factor. In 1993 in Poland a man was arrested for buying children to be exported for adoption in the West. A Warsaw district attorney was reported as stating that pregnant women who could not keep their babies for socio-economic reasons sold them for US$ 900 each. 10/ A new law has been drafted to counter this trade.

43. The Government of the Czech Republic, in its response to the Special Rapporteur's request for information, noted as follows:

> "The interest of foreigners in adopting children from countries of the former Eastern bloc has lately increased enormously. The Czech Republic too is in the centre of this interest. Persons from the United States, Sweden, Italy, Germany and other countries interested in adopting a child, believe in the existence in the Czech Republic of a great number of deprived children needing their help ... The mass media follow the so-called sale of Czech children abroad."

44. Reports of the sale of children from Russia to Western countries, for between US$ 10,000 and 50,000 per child, led to a partial clamp-down on intercountry adoptions by the Russian administration at the end of 1992. 11/ In accordance with a new Russian law, only children with medical or developmental problems so severe that they are rejected by Russian couples may be adopted by foreigners.

45. The call for legislation on adoption in all these countries is growing louder, partly as a result of a regional seminar for Eastern and Central Europe to promote implementation of the Convention on the Rights of the Child, convened in Sofia in 1992. The seminar noted the following situations in various Eastern European countries concerning intercountry adoptions:

> "Poland: There is no particular reference in Polish legislation to intercountry adoptions.
>
> "Lithuania: The law governing intercountry adoption is just at an initial stage.
>
> "Bulgaria: The regulations guiding intercountry adoptions were published on 2 August 1992.
>
> "Latvia: There is presently no legal document to regulate intercountry adoptions." 12/

46. The conflict in the former Yugoslavia has heightened tension concerning the potential sale of children for adoption. In March 1993, an international mission to study the situation in Croatia, in Bosnia and Herzegovina and in the Federal Republic of Yugoslavia (Serbia and Montenegro) called upon the international community and the Governments of the region to monitor trafficking of children due to the hostilities in the region, and made the following suggestions:

> "Since the numbers of orphaned children in need of alternative family care are small, and the States of the region are still capable of taking care of those few children, there is no need for intercountry adoptions to countries outside the region on any significant scale. Governments and international organizations should inform the public accordingly. All local concerned institutions should keep records of any inquiries made by agencies to organize private adoption and/or evacuation of children from [areas of] conflict to other areas." 13/

The situation of children born to rape victims, particularly those of the Muslim community in Bosnia, raises a dilemma as to whether adoptions would be desirable. The community response so far has been against adoptions by people who do not belong to the community concerned, and young men from the community have been encouraged to marry the single women affected by these traumas of war. 14/

47. Self-scrutiny has also emerged as a necessity on the part of those European countries which are at the receiving end of intercountry adoptions. For example, at the end of 1992 it was reported that an adoptive father of Swiss origin had sexually abused his two children adopted from India. 15/ Difficulties encountered by France are noted in the recent report of the Government of France to the Committee on the Rights of the Child as follows:

> "[Intercountry adoption] is particularly prevalent in France, which comes second, after the United States, among the countries of adoption in terms of absolute numbers of children.
>
> "The similarities in the situation in East European countries and South American countries have been noted by the media, which are reporting with greater frequency on the often dramatic circumstances in which children are taken in. The situation is conducive to all kinds of abuses of which children are the primary victims, and the countries of origin, confronted with other emergencies, are not always capable of ensuring their protection.
>
> "Would-be adoptive parents, insufficiently informed about the situation in the foreign country and the implications of intercountry adoption, sometimes yield to financial pressures without receiving any guarantees. The proliferation of such situations leads to 'high-risk' adoption conditions borne, in the final analysis, by the children and the prospective parents.
>
> ...
>
> "The purpose of the authorization procedure for prospective adoptive parents is to protect the child's interests by ensuring that the adopters are properly prepared. Authorization in the case of a foreign child is not a requirement for the granting of adoption rights by French courts. Individuals who are not in possession of such authorization may thus embark upon an adventure for which they are ill-prepared.
>
> ...
>
> "[It is] necessary for France's mechanisms to be improved in order to give these children the same guarantees as those available to children adopted in France." 16/

48. On a related front, at the end of 1992 it was reported that French police had uncovered the trafficking of children from Zaire to France to various families, at times posing as refugees, aimed at benefiting from social security.

49. Other European countries have become more conscious of the need to counter child trafficking in the guise of adoptions. In its reply to the Special Rapporteur's request for information, the Government of Spain stated that the Programme of Action for the Prevention of the Sale of Children was being implemented in Spain, and a new penal code had been drafted that contained provisions to counter fictitious delivery and false paternity, and trafficking through adoption. A seminar held in the Netherlands in 1993 led to the establishment of EURADOP, a European agency bringing together official adoption agencies from nine countries with a view to drafting a code of ethics for practitioners concerning intercountry adoptions. 17/

50. Central and South America remain key areas in regard to abuse in intercountry adoptions, despite new legislation to prevent such abuse. Positive steps taken include the following. Bolivia promulgated a new Juvenile Code at the end of 1992, stipulating that children are not to leave the country for the purpose of adoption unless a juvenile court judge has given its approval. Intercountry adoptions initiated by private couples are no longer permitted; only accredited international agencies working with the approval of the Bolivian Government may be involved in the process. Various persons found guilty of trafficking in children for adoption were convicted in 1991 and 1992 in Bolivia.

51. Peru has also moved towards revising its laws to accord greater protection to children in this area. In 1993 the Standing Commission on Women's and Children's Rights was established by Supreme Decree No. 038-93-Jus. There is also a new Code for Children and Adolescents.

52. However, the situation remained nebulous in various countries. In 1992, a number of babies were recovered in Paraguay, allegedly about to be adopted in North America. 18/ There were increasing reports of disappearances of children in Honduras, and these may have close links with trafficking for adoption. In the reply of the Government of Honduras to the Special Rapporteur's request for information, the position is stated as follows:

> "In the case of sale for adoption, we are faced with a very special situation: every sale implies a price, and neither the expenses incurred in the procedure, nor the fees paid for representation before the courts can be considered as such. We have to admit, however, that as in every country, there are individuals who enrich themselves out of others' needs. It is against these immoral people that an open campaign has been launched, to stop them from continuing with their unlawful activities. The Government of Honduras has set up an Interinstitutional Commission which looks into the case of each child to be given for adoption. The Commission includes such worthy institutions as the Bar Association of Honduras, and is chaired by the First Lady."

53. Perhaps the most tense situation was that relating to adoptions from Brazil. In 1993, a report presented to the European Parliament contained an allegation to the effect that some 3,000 children adopted from Brazil had been channelled into a market for organ transplants in Europe, primarily in Italy. 19/ Brazilian magistrates decided to suspend intercountry adoptions until the matter was clarified. Subsequently, Italy denied this allegation. Interestingly, prior to this furore, the Brazilian Government had informed the

Working Group on Contemporary Forms of Slavery of various innovative steps taken to counter the sale of children, inter alia, the establishment of computer databases on international adoptions; investigations of all acts prior to authorization of adoptions; improved control over the procedures for issuing passports to adopted minors; enhanced cooperation with INTERPOL; control of the departure to other countries of pregnant women and of their return to Brazil in order to check if their new-born babies enter the country; the establishment of a register of international adoption agencies active in Brazil; and the transmission to the executive, legislative and judicial branches of government of all information concerning child trafficking. 20/

54. The 1993 incident deserves continued monitoring and vigilance, and public inquiries in all the relevant countries.

55. It is disquieting that the United States, as the country of destination of a great number of children adopted in an intercountry context, has no national focal point to monitor abuses in this area, all the more so as, according to information received, some private adoption agencies based in the United States have been involved in the trafficking of children.

56. In 1993, the Special Rapporteur requested the United States authorities to clarify whether there was an official trend in the United States supportive of the position that adoption in the United States of children illegally abducted from other countries would not be nullified, thereby implying that children could be adopted by their abductors. To date, no reply has been received concerning this request for clarification.

57. On a related front, the freedom with which individuals in the United States can sell their body for surrogacy purposes is disturbing and is linked with the sale of children. The press reported in 1993 that in Houston a woman had advertised her "womb-for-rent" services as follows (on a traffic sign board): "Womb for rent. Educated, healthy, loving, surrogate mother available." 21/ Some US$ 10,000 were sought for the surrogacy arrangement.

58. Increasingly, Asian countries have moved towards strict legislation of intercountry adoptions and measures against trafficking of children. In 1992, the Philippines promulgated Republic Act No. 7610 providing for stricter deterrence and special protection against child abuse, exploitation and discrimination. 22/ Article IV of the Act establishes severe penalties for child trafficking. In 1992 Sri Lanka amended its adoption law so as to prohibit private unregistered institutions or persons from arranging intercountry adoptions. Now only the Commissioner of Probation and Child Care can allocate children for adoption abroad.

59. In 1993, Myanmar adopted a new Child Law, a provision of which states: "The adoptive parents shall be responsible for the care and custody of the child to ensure that there is no abduction to a foreign country, sale or trafficking".

60. Nevertheless, reports of trafficking are still being received. For example, there are continuing reports of child abductions from Thailand into neighbouring Malaysia where the children are sold to childless couples. In Cambodia, in 1992, the press reported trafficking of babies destined for the United States, in which a Hawaii-based adoption agency was involved. 23/

61. The Government of Israel, in its reply to the Special Rapporteur's request for information, observed that there were a few cases of babies or pregnant women being taken abroad, in order for the babies to be sold for adoption. The police were investigating this kind of case.

62. In regard to Africa, the numbers of children involved in intercountry adoptions remain small. However, as in the case of trafficking of children from Zaire to France for social security purposes noted above, there may be hidden cases of abuse. In regard to Australia, in 1993 the Special Rapporteur's attention was drawn to the continuing challenge posed by Aboriginal children forcibly displaced from their families under the Aboriginal Protection Act 1883-1969, which resulted in much social disruption and dislocation. This situation calls for more facilities to trace their heritage, and for their reculturation, reparenting and community based rehabilitation.

63. The above scenario suggests that although laws exist to prevent abuses in regard to adoption, there are serious loopholes in their monitoring and implementation, some of them resulting from the historical context, others from the development of modern forms of exploitation.

B. Exploitation of child labour

64. It is the exploitation of child labour rather than child labour per se which is objectionable. Extensive information on this subject has been gathered by the International Labour Organisation, and it is not the intention of the Special Rapporteur to duplicate this work. On a related front, the recent appointment by the Sub-Commission of a Special Rapporteur to study the issue of the exploitation of child labour and child bondage is warmly welcomed, and her close cooperation with the Special Rapporteur on the sale of children, child prostitution and child pornography is invited to ensure complementarity of work.

65. The approach of this mandate is to recognize that the exploitation of child labour is a form of sale of children, and to highlight new aspects which came to light in 1993, while complementing and reinforcing other relevant mandates.

1. International developments

66. The International Labour Organisation (ILO) has developed a series of conventions and recommendations on the exploitation of child labour. Convention No. 138 establishes 15 as the basic minimum age of employment, although reductions to 14 may be possible in developing countries. The ILO conventions and recommendations have been strengthened by the Convention on the Rights of the Child, which calls for the stipulation of a minimum age, the regulation of working conditions, and appropriate penalties for exploitation.

In the case of migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also protects migrant workers in irregular situations, such as those employed without proper documents in another country; they retain their rights vis-à-vis their employers, even in such a context.

67. In 1993, the Commission on Human Rights adopted the Programme of Action for the Elimination of the Exploitation of Child Labour. The Programme advocates a number of measures which should be implemented, particularly at the national and local levels. These include the following:

Information campaigns to raise awareness of the problem;

Educational and vocational training to prevent child labour exploitation;

Social action to help families and their children;

Development aid;

Stipulation and application of labour standards;

The adoption by States of appropriate policies and programmes, for example, provision of primary education for all;

Support from international agencies.

68. The International Labour Office, within its Interdepartmental Project on the Elimination of Child Labour, helped to organize in Islamabad in November 1992 the Asian Regional Seminar on Children in Bondage, which developed and adopted A Programme of Action against Child Bondage. The groups of children targeted by the Programme include:

Children pledged in part payment of a debt;

Children "recruited" for work on plantations;

Children lured away from their families, kidnapped or confined in sweatshops or brothels;

Children compelled to work in conditions of exploitation which have no resemblance to a free employment relationship as is sometimes the case with children working unseen in domestic service. 24/

69. The Programme of Action against Child Bondage advocates the following measures:

"Legislation

Review the adequacy of existing legislation. In particular, the following aspects should be covered:

Definition (the various forms of bondage)

Objective (its total abolition)

Specification of sanctions

Compensation of victims

Liquidation of debts and other obligations

Enforcement machinery, e.g. measures for a speedy trial

Enabling provisions for the establishment of special courts

Adverse publicity for violators

Establishment of rehabilitation schemes

"Enforcement

Establish mechanisms to promote and monitor enforcement, e.g. vigilance committees, task forces

Strengthen the judiciary

Provide appropriate penalties to deter violations

Publicize violations

Complement legal machinery with public awareness campaigns and the dissemination of information

Provide information and training for targeted groups, e.g. officials of implementing authorities, the judiciary, trade unions, religious groups

Conduct research and studies

"Education, training and rehabilitation

Make primary education universal, compulsory and free

Facilitate access to schooling through allocation of additional resources

Provide incentives to parents to send their children to school

Allocate greater resources to education

Promote public awareness of the value of education

Implement child labour and compulsory education laws

Establish rehabilitation programmes including counselling services

Provide non-formal education, vocational training, credit facilities and social services

Establish transit and rehabilitation centres

Develop a code of good practice for employers

Promote and implement prevention, prohibition and rehabilitation programmes

"Advocacy and community mobilization

Adopt a policy to eliminate bonded labour

Develop advocacy and social mobilization campaigns using the media, training programmes, investigative studies, etc.

Mobilize specific groups, including employers and workers and their organizations, parents, government, judiciary, community groups, social and political institutions, through targeted information campaigns

Establish networks among concerned groups." 25/

70. In 1993 the Committee on the Rights of the Child issued a statement highlighting many of these issues. It emphasized, in particular, the need for an international effort to make school education a real and effective alternative to exploitative child labour, and called for States to abide by international standards, particularly those set by ILO Conventions. 26/

71. The various recommendations found in the earlier reports of the Special Rapporteur complement many of the measures referred to in these recently adopted Programmes of Action and in other statements, and the task ahead will be to ensure broad-based implementation.

2. National developments

72. Laws prohibiting or regulating child labour, with variations in the age of employment and the types of work allowed, can be found in all parts of the globe. However, law enforcement in this area is generally weak, and it tends to cover only the formal sector. Rampant child labour exploitation is found in both developing and developed countries, although the developing countries have higher figures.

73. The World Labour Report 1992 focuses on the deteriorating plight of children with respect to the exploitation of their labour as follows:

> "most of these children are unpaid family workers, or are in the informal sector, or are working illegally - invisible to the collectors of labour statistics. But the total number is certainly in the hundreds of millions. And although the condition of child workers has worsened dramatically in recent years, and their number has certainly increased in many countries, few have yet developed comprehensive plans to deal with this serious and difficult problem."

74. Asia has some of the highest numbers of child labourers - accounting for up to 11 per cent of the total labour force in some Asian countries. India

probably has the largest number - an estimated 44 million. And in Indonesia, for example, there are 2.7 million working children aged between 10 and 14.

75. African countries are reported to have up to 20 per cent of children work, making up to 17 per cent of the total workforce. In Nigeria, for example, an estimated 12 million children participate in various categories of work.

76. Latin America is the most urbanized region of the developing world, so children there are more likely to be working in cities. Up to 26 per cent of children in some countries may well be working. Brazil has the greatest number of working children - 7 million. Around 18 per cent of Brazilian children between 10 and 14 are economically active. And a similar proportion of Mexican children between 12 and 14 years old are also working. 27/

77. Developed countries also have a large child worker population. Italy probably has the highest numbers in Europe. A survey in the United Kingdom revealed some 40 per cent of the children questioned to be working, the majority illegally. 28/ The United States has a substantial child labour workforce:

> "In the United States the majority of child workers are employed in agriculture and a high proportion of these are from immigrant families ... And many children are employed in everything from fast food stores to garment factories. A 1990 study by the General Accounting Office showed a 250 per cent increase in child labour law violations from 1983 to 1990. And a 'sting' operation carried out by the United States Department of Labor during three days in 1990 found more than 11,000 children working illegally." 29/

78. The issue of child labour exploitation recurred in all parts of the globe in 1993. South Asia was a particular case in point. In India despite laws prohibiting children under 14 from working in hazardous industries, violations are widespread. They include transgressions in industries such as those producing matches, fireworks, glass and bricks, in diamond cutting and lock making, and in stone quarries. Accidents take their toll among children, and late in 1993 there was a campaign to stop the use of children in the fireworks industry, an industry prone to major accidents. 30/ Interestingly, the majority of children in these industries are from the scheduled castes and tribes, reflecting the socio-economic and cultural discrimination that relegates these groups to such forms of employment.

79. India has also witnessed a key movement to liberate people from bonded labour, which particularly affects the "untouchables". Non-governmental organizations have been instrumental in advocating their liberation, as well as in providing alternative training, occupation and rehabilitation. In 1993, child bonded labourers took part in a long march which captured the public imagination on the need for reform. 31/ The South Asian Coalition on Child Servitude, a non-governmental organization, has called for a national commission on bonded labour to fight against bonded labour.

80. The issue of child marriages was raised several times during the year. 32/ This is linked to the phenomenon of men from the Gulf States coming to India in search of young brides. The customers then pay the parents for the girl brides. The problem has to be tackled from both the demand and supply sides; measures are needed on the part of Indian society and on that of the Gulf States. A communication was sent to the Saudi Arabian Government by the Special Rapporteur on the issue (see para. 208 below).

81. The situation in Nepal is described in the addendum to the present report. There are many similarities with the situation in India. Suffice it to note here that a communication was sent to the Government of India during the year concerning the sale and trafficking of young girls, particularly from hill-tribe groups in Nepal, into India for sexual exploitation (see para. 204 below).

82. The pattern is repeated in Bangladesh and Pakistan. The plight of various groups of children, including those involved in farm labour, the clothing industry, domestic service, child marriage and child prostitution, was noted during the year. Of particular concern is the dilemma of child domestic servants, as seen in this observation in respect of Bangladesh:

> "Girls between 6 and 14 are preferred - women cost more and might attract the men ... Girl servants are especially deprived as they are seldom let out of the house ... The girls are discharged at puberty and may end up in a brothel." 33/

83. As for child marriages in Bangladesh:

> "Poor girls without a trade or dowry are often taken as second wives by older men and kept in near slavery. If the first wife does not recognize the second marriage, it is not registered, and when the girl becomes pregnant, she can be abandoned without a legal remedy." 34/

84. The cross-frontier trafficking of Bangladeshi girls into Pakistan has led to a number of them being kept in jail as illegal immigrants.

85. In Pakistan, although there is a law against bonded labour, there is a problem concerning its enforcement:

> "No instance was reported in 1992 of any establishment being penalized for employing children in a category of occupation banned to them. On the other hand, reports abounded of their working in carpet industry, chemical manufacturing, in ports and railways - all prohibited to them." 35/

86. In Sri Lanka, a large number of children are employed as domestic servants, and are at times sexually abused.

87. The demand factor concerning South Asian women is not only local but also transnational. The customers come from a variety of Gulf States and Middle Eastern countries, including Abu Dhabi, Bahrain, Dubai, Kuwait, Muscat, Oman, Saudi Arabia and United Arab Emirates.

88. In 1993 continuing concerns were expressed in regard to children sold for camel racing in the Gulf countries. The children tended to come from Bangladesh, India, Pakistan and Sri Lanka. However, in 1993 the United Arab Emirates issued a law banning the use of child jockeys, and ordered all child camel jockeys to return home. 36/ The matter is not simple, as the children will need to be assisted to return home and to benefit from social rehabilitation.

89. In East Asia, there are continuing reports of the sale and trafficking of children, both local and transnational. Cambodian, Chinese and Lao children and children from Myanmar are trafficked into neighbouring Thailand for exploitation of their labour. Malaysia has a number of children working in its plantations, 37/ while Indonesian children are employed in various industries including the garment, electronics, glass, mosquito repellant and food and farm products industries. 38/ The sex market looms large in Cambodia, China, Japan, Philippines, Thailand and Viet Nam.

90. In Central and South America, the numbers of children at work are vast, especially as there is a large population of streetchildren. In Brazil, one of the most disturbing incidents during the year was the killing of streetchildren. The Special Rapporteur communicated directly with the Brazilian Government, and the reply is noted later in this report. Violence against streetchildren was also reported in Colombia, Guatemala and Mexico. The situation in Colombia is doubly worrying because children are at times used by drug traffickers to sell drugs and/or are recruited as hired killers ("sicarios").

91. The issue of child domestic workers concerns many countries, including Bolivia, Brazil, Colombia, Costa Rica and Peru; most of these children are unprotected by law or other measures. As noted by one observer:

> "Countries have been extremely slow to enact legislation to protect the adult domestic worker, let alone the child domestic worker. Domestic work carries few regulations of hours of pay, and generally there is no access to social security benefits ... In the few countries where legislation does exist, employers find it easy to avoid as the women themselves are unaware of their rights. In Peru, where legislation does exist, only 15% of domestic workers of all ages are registered with the social security programme." 39/

92. In 1993, there were continuing reports of entrapped Haitians forcibly used for labour in sugar cane plantations in the Dominican Republic, and children abused in the informal sector in Mexico. In Trinidad and Tobago, in one case a child was exploited for drug trafficking (cocaine) and was later whipped in accordance with the Code concerning Minors. 40/ Cuba's declining economic situation will also have repercussions for children who may be subjected to economic exploitation.

93. In Africa, reports were received during the year concerning the exploitation of child labour in the informal sector in many countries, including Zaire, and domestic service in a variety of countries.

94. Girl children from rural areas, used in domestic service in urban areas in Benin, Ghana, Guinea, Guinea Bissau, Senegal, Sierra Leone and Togo are particularly vulnerable. 41/ In Cote d'Ivoire, the sale for labour has been documented as follows:

> "They all came from the same area, the north-eastern part of Côte d'Ivoire and the north-west and South of neighbouring Ghana. There are therefore Ghanaian networks and Ivorian networks. These are characterised by a bipolar system consisting of a rural base, purveyor of child labour, and an urban target, the consumer of child labour. The two are linked together by intermediaries." 42/

95. In 1993, slavery was reported in Mauritania, despite laws abolishing it. The situation is aggravated by the fact that descendants of slaves are reclaimed by the master after the parents' death. In Burkina Faso, the situation of children in the informal sector, including domestic service, remains serious, and there have been several instances of forced marriages. In Sudan, there are continual reports of forced labour and slavery of children, particularly among those of certain ethnic groups. The Special Rapporteur communicated with the Government of Sudan on this issue in 1993. The response is reflected below (see para. 243).

96. European countries were faced with child labour exploitation on various fronts in 1993. In Hungary, there is a high level of juvenile crime and this is linked with streetchildren.

97. Children are used for various purposes by the Mafia in Italy, while the plight of overseas domestic workers in the United Kingdom is noticeable.

98. In the United States, at the end of 1992 it was reported that Burger King had settled charges arising out of allegations concerning violations of hours of work for teenagers under 16 years of age by paying a large fine. 43/

99. These incidents indicate the universal nature of the problem, which requires concerted, interdisciplinary action to tackle it.

C. Organ transplantation

100. The issue of children sold for organ transplantation remains the most sensitive aspect of the Special Rapporteur's mandate. While evidence abounds concerning a trade in adult organs in various parts of the globe, the search for proof concerning a trade in children's organs poses greater difficulties. It should be noted that during the Special Rapporteur's mission to Nepal in 1993, Nepali police informed him of a recent case concerning children trafficked into India for this illicit purpose. There is thus mounting evidence of a market for children's organs.

1. International developments

101. Although there is no international instrument on the issue of human organ transplantation, the implication of the Convention on the Rights of the Child, which protects children's right to life and freedom from abuse and exploitation, is that the sale of children for organ transplants is totally illegal.

102. In 1991 the World Health Organization (WHO) issued a set of Guiding Principles on Human Organ Transplantation spelling out the conditions of consent required in the case of organ removal from cadavers. 44/ In regard to children's organs, the prohibition is almost absolute (Principle 4):

> "No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues."

There are also key stipulations against commercialization (Principle 5):

> "The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any compensation or reward) for organs should be prohibited."

103. In 1993, the European Parliament passed a resolution prohibiting trade in transplant organs, 45/ noting in its Preamble that:

> "J. ... there is evidence that foetuses, children and adults in some developing countries have been mutilated and others murdered with the aim of obtaining transplant organs for export to rich countries,"

it continued as follows:

> "1. Calls on the Council to take measures to prohibit commercial trade in organs throughout the (European) Community territory.
>
> "2. Calls for a ban on imports, use and/or transplant of organs and tissues whose origins and state of health is not known with certainty.
>
> "3. Calls on the Commission to condemn the laxness of certain countries which allow such trafficking to develop.
>
> "4. Calls for action to be taken to put a stop to the mutilation and murder of foetuses, children and adults in certain developing countries for the purpose of providing transplant organs.
>
> "5. Calls on the Commission to draw up a code of conduct comprising:
>
> (a) conditions governing the origin of transplant organs,
>
> (b) the principle that organs should be donated free of charge and that donors should remain anonymous to the recipient,

(c) the principle that no supplementary payment specific to the medical act of transplanting organs should be made,

(d) A system of:

1. Approval of hospital departments responsible for transplants;

2. Separation of intensive care units from surgical units responsible for transplants;

(e) A ban on the removal of organs of minors, from adults who are legally incapable, and from anencephalic infants;

(f) The establishment of medical criteria for placing patients on waiting lists, including in the following order: (1) medical urgency; (2) the possibility of guaranteeing transplant patients a reasonable post-operative existence; (3) histocompatibility; (4) length of time on the waiting list; the list should be circulated solely within medical circles;

(g) the right of patients to information about possibilities of organ transplants appropriate to their state of health."

104. The measures proposed for European cooperation in this resolution passed by the European Parliament could be a lesson for other parts of the world. They include the following:

"(a) Computerisation of data on available organs, patients awaiting transplants and parameters for ensuring histocompatibility, for example extension of the Eurocomputerlink system;

"(b) Stepping up of European cooperation among non-profit-making associations responsible for gathering such data;

"(c) Settlement of the costs arising from the removal of organs, proper treatment and where applicable, transport to be based on the principle that the cost is payable by the recipients of the transplants or by their health and social security schemes;

"(d) Maximum use of live donors belonging to the family for kidney transplants;

"(e) Continuation and intensification of scientific research into artificial organs and xenografts;

"(f) Cooperation between national health services responsible for organ transplants, with special emphasis on the importance of establishing specialised services in those countries which do not yet have them so as to avoid international transportation of patients awaiting transplants, which always leads to trauma;

"(g) Launching of public awareness campaigns, particularly among the young, based upon the principle of generosity and solidarity, with due regard for the individual person and individual feelings;

"(h) Efficient hospital records and the introduction of an effective transplant programme between central and outlying hospitals." 46/

105. The Council of Europe is now progressing towards drafting a protocol onorgan transplantation. 47/ Other interlinked draft instruments are a convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine, and a bioethics convention.

2. National developments

106. Many countries and areas have moved in recent years towards passing legislation to regulate organ transplantation, and to prohibit the use of children's organs. Three recent cases are of note: India, the Philippines and Russia. Others, such as Bulgaria, Hong Kong, Israel and Poland are preparing legislation on the issue.

107. However, the situation at the national level is often nebulous. In the 1993 report of the Special Rapporteur, it was noted that the non-governmental sector had made allegations concerning various incidents in Argentina, Brazil, Colombia and Peru. Since then, the Special Rapporteur has contacted the Governments concerned for additional information and clarification. Some Governments have not responded, while others have provided limited explanations.

108. In a reply to the Special Rapporteur's request for information the Government of Colombia commented on the subject of the sale of children's organs as follows:

"There is no information in our country concerning this unlawful activity. When private individuals have denounced such practices through unofficial channels at the national and international level, the State has requested through the Colombian Institute of Family Welfare that an investigation should be made; the outcome of the investigation has been that the truth of the accusations could not be established beyond doubt."

109. In 1993, there were further allegations concerning Brazil in regard to a trade in children for adoption in Europe, (see para. 53 above) with implications of the sale of organs. Earlier in the year, the matter was taken up by INTERPOL, which made the following comment to the Sub-Commission on Prevention of Discrimination and Protection of Minorities:

"During the past few years the press in a number of countries have suggested that children are being adopted in certain developing countries, the sole purpose being to use their organs in transplant surgery. This subject has been also mentioned at various conferences hosted by the United Nations and attended by representatives of the

General Secretariat and by non-governmental organizations specializing in the welfare of children. Until quite recently, no concrete evidence or specific case has come to the attention of the General Secretariat.

"At the request of the National Central Bureau of Brazil, the General Secretariat has been asked to draw this matter to the attention of member countries and, in particular, to request that the topic be included in the work programme and also be considered by the General Assembly." 48/

110. During 1993, the Special Rapporteur also communicated directly with various countries concerning new allegations. The governmental responses are noted below in the section on communications; they vary between "no response" and denial. Interestingly, by contrast, during his mission to Nepal, the police reported to the Special Rapporteur an incident concerning trafficking of children from Nepal to India for the purpose of organ transplantation. This is described in the addendum to the present report.

111. In 1993 the need to focus on additional areas became apparent. In a report to the European Parliament, the issue of organ sale in the European community was raised, with implications for children:

"In the European Community countries the shortage of organs from dead donors could result in organs being imported from third countries. Whether or not money changed hands, we believe that this would be wrong for both moral and health reasons. The donated organs would come from countries which had not yet reached our level of prosperity. Again, organs would be removed from people whose living conditions and health were not the best." 49/

This highlights the "pull factor" of developed countries, which can afford to buy organs from developing countries, thereby regrettably contributing to a transnational market.

112. Greater monitoring of the demand and supply sides is required, and close collaboration with INTERPOL and other organizations dealing with crime is needed in the following countries and areas, inter alia:

(i) Central and South America, including Argentina, Brazil, Colombia, Guatemala, Honduras, Mexico and Peru;

(ii) Asia and the Middle East, including China, Hong Kong, India, Iraq, Jordan, Nepal, Pakistan, Taiwan (province of China), the Gulf countries, and the West Bank;

(iii) Europe, including Albania, Austria, Germany, Italy, Poland and Switzerland;

(iv) North America.

113. For the purpose of future monitoring, it is also necessary to identify more concretely actual and potential sale of children's organs, as distinct from the sale of adult organs; much of the documentation on the subject regrettably confuses the two categories and can result in misunderstanding.

D. Other forms of sale

114. This remaining category covers abductions, disappearances and kidnappings, on the one hand, and child soldiers, on the other hand.

115. There were various reports of kidnappings, abductions and disappearances in 1993. Some may have been linked with illegal adoptions, child labour exploitation and organ transplants.

116. Honduras was cited by several sources during the year as a major source of concern in regard to the disappearance of children, closely linked according to information received to illegal adoptions. For instance, dubious circumstances surround the support rendered by a foreign private agency to a Honduran centre assisting unmarried mothers and their children. The killing and disappearance of children have also been noted by the Committee on the Rights of the Child in regard to Peru. 50/ This may be connected with a draconian new law which extends the crime of terrorism to cover adolescents.

117. In Argentina, a case is pending concerning a religious cult which is alleged to have been involved with kidnapping children and violating their rights. 51/ The children in question are from Argentina, Canada, Peru, Spain, the United States and Uruguay. There are also allegations that these children have been sexually abused.

118. In Asia, in 1993, there were various reports of kidnappings and disappearances. In Indonesia, the police smashed a ring that was smuggling Indonesian women into Malaysia. 52/ In China, a boy was kidnapped and sold into slavery in a distant province. 53/ He escaped and reached home by begging. In Cambodia, the Khmer Rouge abducted eight children in August 1993, as part of their campaign to intimidate people of Vietnamese origin in Cambodia. 54/

119. In Europe, there were several occurrences of note during the year. In its reply to the Special Rapporteur's request for information the Government of Croatia referred to various cases of abduction. This should be seen in the context of Eastern Europe as a new market for the trade and disappearance of children. In Western Europe, some 6,000 children are classified as missing, and disappearances of children are likely to increase with the abolition of internal frontiers in the European Union. 55/ There has therefore been a call for more countries to accede to the Hague Convention on the Civil Aspects of International Child Abduction (see para. 41 above). A legal instrument of the European Union on this matter may also be in the offing, which would

(a) Provide for procedures whereby court orders made in the case of abduction are automatically enforceable;

(b) Facilitate direct measures to return abducted children, but also avoid the problem of child abduction by means of preventive measures;

(c) Contain special provisions concerning access rights, even where the children are illegitimate;

(d) Give priority to procedures for the speedy return of children, with the member States bearing part of the responsibility;

(e) Limit as far as possible the causes of non-recognition and non-enforcement of decisions;

(f) Ensure that no charge is levied for the procedure;

(g) Improve and expedite cooperation between member States and the administrative bodies concerned. 56/

120. Apart from this regional initiative, bilateral and national initiatives should also be pursued. France has entered into a series of bilateral agreements with Egypt, Morocco, Portugal and Tunisia to prevent the abduction of children. The need for a registry of missing children and accessible means of helping those affected was highlighted further at the end of 1993 when a "video hotline" for missing children was set up in the United States.

121. During the year, the Special Rapporteur addressed a communication to the Government of Uganda concerning the disappearance of a number of children, possibly destined for a Middle Eastern country. No reply has been received to date.

122. In regard to the issue of child soldiers, the problem is widespread and is found in many parts of the globe where there are armed conflicts. Part of the problem arises from the varying criteria concerning the age of recruitment or conscription of children. The official age in many countries varies between 15 and 18, but in practice much younger children are used as child soldiers.

123. A number of human rights instruments touch upon the issue, including the 1977 Additional Protocols I and II to the Geneva Conventions of 1949. The Convention on the Rights of the Child contains the following provision, which is weaker than desired:

"Article 38

...

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into the armed forces. In recruiting among those persons who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest."

124. As stated in earlier reports submitted by the Special Rapporteur, the threshold age of 15 is too low and should be raised to 18 in accordance with the definition of the term "child" offered by the Convention. The Committee on the Rights of the Child has also favoured a higher age criterion in its call for a new instrument to protect children in situations of armed conflict. 57/ This was reiterated by the International Conference for the Protection of War Victims, held at Geneva in 1993, which called for the raising of the age criterion to 18. 58/

125. Another anomaly is that in some countries a person may be recruited during the year he or she becomes 18, even though the recruit may only be 17 when he or she enters the army. This is the case in Israel and Sweden. The anomaly should be rectified.

126. On the ground, the situation is not reassuring. The activities of these children range from fighting to spying. As noted by one source, 59/ at present, children are known to be fighting in at least 24 wars: civil wars and conflicts in Angola, Afghanistan, Burma, Cambodia, Chad, Colombia, Guatemala, Liberia, Mozambique, Peru, Rwanda, Somalia, Sri Lanka, Tadjikistan, Northern Ireland; liberation movements of the Kurds, Palestinians, Timorians, West Irians and West Saharans; and in international conflicts between Armenia and Azerbaijan, between Serbs, Croats and Muslims in Bosnia and Herzegovina and Croatia, and between Indians, Pakistanis and Kashmiris in Kashmir.

127. Girl children are reported to be fighting in El Salvador, Guatemala, Lebanon, Liberia, Mozambique, Palestine, Peru, Philippines, Sri Lanka, and Turkey.

128. The situation is all the more tragic because children are often forced to join the armed forces at gunpoint. For example, in the conflict in former Yugoslavia:

> "Some young Serbs were threatened with death if they did not join Serb troops. In a few cases, protected persons were made to serve with the forces of a hostile group.
>
> "Medecins sans frontieres reported that a 16-year-old had been captured by the Serbs and had been forced to help them pillage houses.
>
> "The Tchetniks captured a group of men between 17 and 70 and shot them.
>
> "Helsinki Watch also reports on the disappearances of non-Serb men of military age taken from villages and detention centres." 60/

129. In some cases such as in Liberia and Somalia, where demobilization of children has been claimed, in practice many children are still used as soldiers. In other cases where the demobilization of children has begun, for example in Mozambique and Sierra Leone, the issue of rehabilitation has come to the fore, especially as many child soldiers suffer from physical and mental damage. The difficulties faced in this process have been commented upon as follows:

"[Many child soldiers] are also involved in substance abuse - marijuana/cocaine and had gunpowder added to their food to keep them awake and alert. Efforts to detoxify the children was a principal concern in the emergency phase, and it appears that some children will still go to great lengths to obtain drugs." 61/

130. From a case study in Sierra Leone, it was found that some 80 per cent of the children had perforated eardrums and war wounds, compounded by post traumatic stress disorder. 62/ The process of rehabilitation necessitates a family-based approach, avoiding the institutionalization of these children.

131. Demobilization and family-based or community-based rehabilitation is an urgent necessity for children in all the armed conflict situations noted above. In the case of children fleeing from recruitment, it is also imperative to grant them refugee status and offer them international protection.

II. CHILD PROSTITUTION

132. The working definition adopted for the term "child prostitution" is "the sexual exploitation of a child for remuneration in cash or in kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc.)". This was the basis of the questionnaire on the sale of children circulated globally by the Special Rapporteur in 1991.

133. As already indicated, the problem has become internationalized, thereby requiring both international cooperation and solidarity. It is closely linked with the issue of child pornography, as the one may lead to the other.

1. International developments

134. There has been a long line of international instruments relating to slavery, trafficking and the exploitation of women and children. The most recent is the Convention on the Rights of the Child, which calls for measures against the inducement or coercion of a child to engage in any unlawful sexual activity, and against the exploitative use of children in prostitution (arts. 19 and 34).

135. In 1992 the Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography. 63/ Its strategies include the provision of more information, education, legal measures and law enforcement, social measures and development assistance, rehabilitation and reintegration, and international coordination to address the issue of child prostitution. The Programme of Action calls for effective legal and administrative measures to prevent trafficking and sale of children, and voices the following specific concerns:

"47. Special attention should be paid to the problem of sex tourism. Legislative and other measures should be taken to prevent and combat sex tourism, both in the countries from which the customers come and those to which they go. Marketing tourism through the enticement of sex with children should be penalized on the same level as procurement.

"48. The World Tourism Organization should be encouraged to convene an expert meeting designed to offer practical measures to combat tourism.

"49. States with military bases or troops, stationed on foreign territory or not, should take all the necessary measures to prevent such military personnel from being involved in child prostitution. The same applies to other categories of public servants who for professional reasons are posted abroad.

"50. Legislation should be adopted to prevent new forms of technology from being used for soliciting for child prostitution."

136. The Working Group on Contemporary Forms of Slavery has also prepared a draft Programme of Action for prevention of traffic in persons and the exploitation of the prostitution of others which, although it does not specifically concern children, has various strategies which can be promoted for their protection. These include information, social measures and development assistance, legal measures and law enforcement, rehabilitation and reintegration, and international coordination.

137. These programmes of action should be disseminated broadly. Some Governments have already begun to react to the Programme of Action for the Prevention of the Sale of Children. The responses that they have sent to the United Nations have been rather legalistic, and should provide more details about implementation problems and actual case profiles.

138. The World Tourist Organization (WTO) drew the attention of the Working Group on Contemporary Forms of Slavery of the Sub-Commission in 1993 to the Tourism Bill of Rights and Tourist Code, adopted in 1985, which established standards of conduct for States, tourism professionals and tourists on the issue of sexual exploitation as follows:

"(a) States are reminded of the need to prevent any possibility of using tourism to exploit others for prostitution purposes;

"(b) Tourism professionals and suppliers of tourism and travel services are asked to refrain from encouraging the use of tourism for all forms of exploitation of others;

"(c) Tourists themselves are requested to refrain from exploiting others for prostitution purposes." 64/

WTO does not feel that another expert meeting is necessary at this point in time.

139. The Special Rapporteur welcomes the growing involvement of INTERPOL in the fight against the sexual exploitation of minors. INTERPOL has established a Standing Working Party on Offences against Minors, and in its reply to the Special Rapporteur's request for information it indicated that a series of measures were being taken on this issue, including dissemination of the Programme of Action for the Prevention of the Sale of Children to national bureaux and requesting member countries to appoint specialist liaison officers on offences against minors.

140. INTERPOL also supports many of the recommendations made by the Special Rapporteur in last year's report, for example the promotion of a "pro-child-anti-crime network" and training for quality law enforcement personnel.

141. Its Standing Working Party met in 1993 and set up subgroups to examine the following: 65/

(a) Law enforcement; legislation

(i) Child pornography and child prostitution;

(ii) International cooperation; liaison network; legislation and application of laws;

(iii) Sex tourism; international adoption;

(b) General measures

(i) Victim assistance; police structure; missing children; free telephone help-lines; prevention models;

(ii) Training;

(iii) Research - statistics.

142. The framework for future cooperation in this area will include the appointment of contact agents in member countries; the preparation of a report on child pornography, including a study of national laws; the compilation of reference material on computer pornography; increased sharing of information via contact agents, especially on the movements of paedophiles; contacts to counter sex tourism; the collection of information about national laws on child prostitution; the collection of statistics on offences against children, standardization of the forms used for this purpose, and desegregation of statistics into gender and age group; the training of police on human rights and victim assistance; the compilation of information on victim assistance; legislative measures and regulations on prevention models. This is an auspicious development, as the availability of information on the sale of children depends very much upon cooperation from law enforcement authorities.

2. National Developments

143. The situation in 1993 remained most disturbing, and there was a close linkage between the internationalization of child prostitution and child pornography.

144. Eastern Europe has emerged as a new market in the sexual exploitation of children. The case of children sold for prostitution in Russia was well covered by the international press. 66/ In neighbouring countries, the menace is omnipresent. For instance, in its reply to the Special Rapporteur's request for information the Government of the Czech Republic observed that child prostitution was growing and was often linked with the Romany population. It affected girls as young as 11, and included:

"(a) Girls practising prostitution of their own free will. They often form into larger groups, including also girls having escaped from home or children's homes;

"(b) Girls forced into prostitution by their parents;

"(c) Girls having become prostitutes of their own free will but later coming under the influence of pimps."

145. In Western Europe, the problem is more serious than is apparent at first glance. As noted in the report of France to the Committee on the Rights of the Child:

"In 1988, a vast campaign was launched to prevent sexual maltreatment, aimed at pornography and prostitution but above all at incest and paedophilia. The results of the campaign, published in 1992, clearly shows a failure to recognize the extent of the problem." 67/

French paedophiles are known to be operating in other parts of the world. A case was pending against a French paedophile in Thailand.

146. In Belgium, a "flesh trade", exploiting young women from developing countries, for example, the Philippines, and from Eastern European countries, came to light in 1993. At times the girls are trafficked and raped in the process.

147. The problem has also emerged in the United Kingdom. It is both local and transnational. British paedophiles are known to seek their victims in other parts of the world, such as South-East Asia. However, interesting initiatives have been taken to counter the sexual exploitation of children, for example, the Eyes Campaign, which has mobilized Members of Parliament against child sexual exploitation. There is also pressure to have a law barring under-18-year-olds from amusement arcades, which are seen as haunts for prostitution.

148. The Nordic countries have been increasingly affected by the acts of their paedophiles operating in developing countries. The following excerpt from the reply of the Government of Sweden to the Special Rapporteur's request for information is most pertinent:

"Considering that the number of sex clubs has probably diminished and that it has become increasingly difficult to rent or own an apartment for the purpose of prostitution, it is possible that prostitution has partly entered a new path. The increased opportunities for marketing through new communication channels, such as freephone telephone numbers, video and telefax and new forms of covert advertising have probably led to a partial change in the forms of prostitution.

"The greatest change in forms of prostitution, however, is probably bound up with the consequences of internationalization. Prostitution can no longer be discussed in a specifically Swedish perspective. Even though each country has its own pattern of prostitution, there are distinct global movements at work today. One of these is the migration of women from the third world to brothels in Europe, North America and Japan.

Another concerns the dramatic rise in Western sex tourism, above all to South-East Asia. Another new phenomenon is the sexual exploitation of ever-younger children ... Swedish tourists taking part in this sex tourism can be said to constitute part of Sweden's prostitution problem."

149. A case in point was the Swedish national caught in flagrante delicto sexually exploiting a child in Thailand during the past year. Although his passport was confiscated, he managed to acquire a new passport, and subsequently jumped bail and fled back to Sweden. Although Swedish law allows prosecution of its nationals for crimes committed outside the country, such prosecution is unlikely unless the child's age can be proved to the satisfaction of the Swedish authorities. This raises issues of both procedure and substance. The case is now pending.

150. Subsequently a Swedish police liaison officer was appointed to monitor the situation in South-East Asia. It is hoped that his mandate will be expanded to represent the whole of the Nordic region.

151. Norway has also moved against child sexual exploitation. In the Government of Norway's reply to the Special Rapporteur's request for information it is stated that a special police unit will be set up to deal with this issue and to assist local police. Interestingly, the private sector has stepped in to help, thereby highlighting the importance of peer group pressure: the Norwegian Travel Business Association has decided to refuse admission to sex tour operators and is initiating a campaign against sex tourism. At times, the courts have also stepped in, even when the crime takes place outside Norway; in 1990, three Norwegian men were sentenced for sexually exploiting 13-year olds in the Philippines and Thailand.

152. Germany has taken similar action, as a number of German tourists have been involved in the sexual exploitation of children in other countries. Previously the German Penal Code applied to the actions of Germans abroad only if both perpetrator and victim were German nationals. It has now been amended to make prosecution possible even if the victim is not a German national. In effect, it extends German law extraterritorially to cover the acts of German nationals abroad in relation to the sexual abuse of children where the victims are not German.

153. The situation of child prostitution in Asia remains serious. The extent of the problem in Thailand is well known. At the end of 1992, the newly elected Government set the eradication of child prostitution in the country as a high priority. Two draft laws should, when adopted, afford greater protection to children: the draft law concerning the sale and trafficking of children and the draft law concerning the prevention and control of prostitution. These draft laws seek to provide protection to children based upon a higher age threshold, namely 18 years of age, and to punish customers and procurers more severely. It is also envisaged that conspiracy for the purpose of sexual exploitation will become an offence.

154. However, the real situation is more disillusioning. Thailand was in the headlines on many occasions during the year not only in regard to local child prostitution but also cross-frontier trafficking of women and children from

Cambodia, China, Laos and Myanmar; and the Special Rapporteur was in communication with the Thai Government in regard to girls from Myanmar trafficked into prostitution in Thailand (see paras. 214-215 below).

155. During the year, there were allegations that a girl from Myanmar was shot in Thailand after being sold into prostitution. The Thai authorities are invited to pay close attention to this issue and to take expeditious action to see that justice is done. Moreover, there were additional reports that a number of Burmese girls sent back from Thailand after being lured into prostitution in Thailand were subsequently imprisoned by the Government of Myanmar. If this is the case, the girls should be released immediately and accorded protection and assistance for rehabilitation, based upon respect for human dignity and human rights. International monitoring is also required and the Special Rapporteur on the situation of human rights in Myanmar is invited to examine the issue.

156. A number of foreign paedophiles were arrested in Thailand during the year. An Australian paedophile was apprehended not only for sexually exploiting a Thai child but also for sacrilege; he had placed a Buddha image in a sacrilegious position on the girl's body.

157. The problem of child prostitution increasingly affects other South-East Asian countries. In 1993 a court in Laos sentenced a man and a woman to prison for selling a young girl to a businessman in Thailand. In Cambodia there were recurrent complaints against United Nations peacekeepers for indulging in the sexual exploitation of local girls. As noted by a commentator:

> "The tragedy of Cambodia becoming a part of this sex market is that it comes at a time when the country is supposedly on its way to a 'new' society after more than two decades of violence, destruction and repression, and the victims will always be the children." 68/

158. In neighbouring Viet Nam, the sex trade has grown rapidly; many of its victims are children under 16 years of age. There is also cross-border trafficking of girls between Viet Nam and China. Meanwhile, China has witnessed an upsurge of local child prostitution. Thousands of women and children are sold clandestinely as slaves, and child prostitution in big cities such as Shanghai is on the rise.

159. Apart from local prostitution in Malaysia, Malaysian tourists are known to visit southern Thailand for sexual services. In the Government of Malaysia's reply to the Special Rapporteur's request for information, it is interesting to note the various anti-crime measures it is taking, such as community awareness campaigns and neighbourhood programmes, as well as new policies and laws to protect women and children. These include the 1991 Child Protection Act and the 1993 Women and Girls Protection Act, which protect women and girls from exposure to prostitution.

160. Although the Philippines is known to have a large population of child victims of prostitution, 1992 witnessed the adoption of an innovative law to protect children, namely the Republic Act (RA) 7610, which promotes stronger

measures against those who victimize children for sexual purposes and who traffic children. As noted in the reply of the Government of the Philippines to the Special Rapporteur's request for information:

> "RA 7610, also known as the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act, mandates the Social Welfare Department (DSWD) to issue a travel clearance or certificate of travel to unaccompanied minors travelling abroad (art. IV, s.8) as a measure to protect children and prevent child trafficking. This law strengthens article 3 of the RP 605, otherwise known as the Child and Youth Welfare Code. Furthermore RA 7610 articles III, V and VII protect children from child prostitution and other sexual abuse, obscene publications and indecent shows and other acts of abuse respectively, providing penalties for its violation."

161. In South Asia, the situation remains disturbing. Child prostitution is interwoven with the extensive exploitation of child labour and the presence of numerous streetchildren in the region. Apart from local children found in prostitution, the trafficking of children for sexual purposes across frontiers is rampant between many South Asian countries, for example, Nepal-India, Bangladesh-India, Bangladesh-Pakistan, Pakistan-India. During the year, the Special Rapporteur communicated with the Indian Government concerning the trafficking of Tamang girls from Nepal into India. No reply has been received to date.

162. Sri Lanka's child prostitution problem has been the subject of new initiatives, such as a clamp-down on foreign paedophiles. The police have also called for the age of consent to be raised from 12 to 16 years of age, as this would accord more protection to children against sexual exploitation. Other recent suggestions for new measures against sex tourism in Sri Lanka include the following:

(a) Organizers of sex tourism should be identified and action initiated to nullify their contracts;

(b) Sex tourists should be identified and appropriate action taken to deal with them through the immigration authorities;

(c) Periodical checks should be carried out in tourist resorts for such organizations and tourists;

(d) The dissemination of information pertaining to the unlawful acts should be encouraged by awarding handsome rewards to informants. 69/

163. Japan's position in regard to child prostitution is anomalous. The fact that many Japanese visit South-East Asian countries as sex tourists is well known. However, there is also a trade of women and girls to Japan, connected with the Yakuza, which has a hand in many illegal trades in Japan. The unfortunate consequences of their enslavement, include torture and death. In the reply of the Government of Japan to the Special Rapporteur's request for information, it is admitted that:

"recently the National Police Agency received reports of cases in which members of organized crime groups etc. controlled runaway girls and forced them into prostitution."

164. The Americas remain areas of major concern, especially in view of the large population of streetchildren and children exploited for their labour. In recent reports submitted by Bolivia and Mexico to the Committee on the Rights of the Child, sexual exploitation of children was referred to, 70/ although in less detail than desired. Sexual exploitation affects all countries of this region. The trade in humans from China and Eastern Europe (for example, Hungary) to the United States was also reported substantively in 1993.

165. Likewise, as noted by the Special Rapporteur in his previous report, the problem has increasingly come to the fore in Africa. The issue affects all the countries mentioned earlier in the current report in regard to the exploitation of child labour. Sexual exploitation is often intermingled with the informal sector, street life and domestic service. In Zaire, the problem of girls victimized for prostitution has become increasingly visible. Of further note is the trafficking of young boys and girls from Mozambique to South Africa for sexual exploitation. This is at times linked with the refugee situation, and highlights the fact that refugee children are vulnerable to the sex trade, whether in Africa or elsewhere.

166. Perhaps the most interesting innovation during the year related to Australia. Several Australians were apprehended abroad for sexually abusing children, and this propelled a national initiative to extend Australian criminal law to cover the misdeeds of its nationals abroad. This exemplified the trend towards "extraterritoriality", whereby nationals can be incriminated for acts committed against children in other countries. The legislative options open to Australia were described as follows:

"1. Creation of a Commonwealth criminal offence with extraterritorial application of sexual abuse or exploitation of children;

"2. Creation of a uniform State offence of sexual abuse or exploitation of children;

"3. Creation of a Commonwealth criminal offence of inciting, organizing or profiting from child sex tourism or other forms of child sexual exploitation." 71/

167. As with other countries, the rule of double criminality generally applies, i.e. in order for a person to be prosecuted, the act in question must be illegal both under Australian law and under the law of the country where it has taken place. For the purposes of delineating the crime of sexual exploitation, a major challenge is that of how to deal with the issue of the age of consent where the age criterion in Australia differs from that of the country where the offence has taken place. The current situation in this regard is described as follows:

"The Commonwealth's preferred approach is to establish two main offences. The first offence will be directed at prescribed sexual offences against children under the age of 16. Setting the age of consent at 16 reflects the age applicable in most Australian jurisdictions. The second offence will be framed in terms of an aggravated sexual offence, and will apply to sexual relations with children under the age of 12. Double criminality, which may be a requirement of mutual assistance, will be present in relation to the younger age group, though it may not always be present for the age group 12 to 16." 72/

168. There are not only substantive difficulties concerning the nature of the offence and the age criterion, but also procedural difficulties. How to obtain the evidence from a child who is in another country? This may depend upon formal or informal mutual assistance agreements between the countries concerned and cooperation between law enforcement personnel. Meanwhile, videotaping the child's testimony or using satellite communications for such testimony may also be possible.

169. As for the third parties who may benefit from child exploitation abroad, "The Commonwealth proposes to legislate to create a substantive offence of inciting, organizing or profiting from overseas tours by Australian nationals or residents for the purpose of sexual activities involving children". 73/

170. While this extraterritorial extension of national laws may be subject to various substantive and procedural obstacles, it is a welcome step towards promoting accountability and responsibility with respect to the ever-expanding transnational sexual exploitation of children.

171. Several communications from the Special Rapporteur to various Governments during the year concerned both child prostitution and child pornography. The persons involved in alleged malpractices included Swiss and German nationals (see paras. 198 and 212 below).

III. CHILD PORNOGRAPHY

172. The working definition of "child pornography" adopted by this mandate is "the visual or audio depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material." This was used as the basis of a questionnaire circulated to Member States in 1991. To this definition should be added pornographic performances.

173. Child pornography has become increasingly transnational, and is interwoven with child prostitution. The advent of new technology raises many questions regarding the efficacy of existing laws on the subject. Equally important is the issue of consumer liability; some jurisdictions do not criminalize the possession of child pornography, while others do.

1. International Developments

174. The Convention on the Rights of the Child voices the need for measures against the exploitative use of children in pornographic performances and materials (arts. 19 and 34). The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, further

emphasizes the need for more information, education, legal measures and law enforcement, social measures and development assistance, rehabilitation and reintegration, and international coordination. On the issue of child pornography, certain measures are underlined:

> "52. Law enforcement agencies, and social and other services should place a higher priority on the investigation of child pornography in order to prevent and eliminate any exploitation of children.
>
> "53. States that have not yet done so are urged to enact legislation making it a crime to produce, distribute or possess material involving children.
>
> "54. Where required, new legislation and penalties should be introduced for the mass media which broadcast or publish material threatening the psychic or moral integrity of children or containing unhealthy or pornographic descriptions and to prevent new technology being used to produce pornography, including video films and pornographic computer games.
>
> "55. States should be encouraged to protect children from exposure to adult pornography, especially through new forms of technology, by adopting suitable legislation and appropriate measure of control."

175. The references to the positions of the World Tourism Organization and INTERPOL in the earlier section on child prostitution of the present report are also pertinent to child pornography, as is the trend towards "extraterritoriality" whereby persons can be incriminated for offences committed in other countries, to protect children from victimization.

2. National developments

176. There are major child pornography markets in North America and Europe. In many instances, paedophiles from countries of these regions visit developing countries and victimize children for the purposes of pornography. Videotapes and photographs are often the means used for doing so, and pornography is linked to victimization through prostitution. During the year, several paedophiles (men and women, and at times couples) from these regions were apprehended in South-East Asia.

177. In a statement to the Sub-Commission in 1993, Germany admitted that there were some 30,000 "lovers" of child pornography in the country. 74/ Sometimes parents are involved in exploiting children. The task of countering the trade is not simple:

> "It is often difficult for the authorities to effectively prosecute offenders because the production and distribution of child pornography are difficult to prove, especially since the introduction of the new medium of video film. The entire production process can be completed without assistance. Furthermore such films are not marketed via the normal network, i.e. through videotheques and sex shops, but mainly through box number advertisements - often in disguised form - in magazines or tabloid newspapers. Since the mere possession of such

material is not punishable, dealers in video cassettes of this nature can pose as collectors by keeping only the 'master' and making copies for sale as required." 75/

178. The law in Germany has since been changed. In the reply of the Government of Germany to the Special Rapporteur's request for information dated 8 November 1993, it is stated that the upper age limit for the legal protection of minors under the Penal Code has been set at 14 years, and a new offence has been established, that of being in possession of child pornography. This also has extraterritorial application. The rationale given by Germany is as follows:

"The purpose behind making the possession of child pornography punishable is that the mere consumer of child pornography, whose demand, in the final analysis, creates the market for such products, can be called to account. The intention is to squeeze the market for child pornography products as far as possible through this and through the deterrent effect of the threat of stiffer penalties for distribution and obligatory confiscation. The ban on possession of child pornography, however, will be restricted to such representations as depict an actual occurrence. Forms of representation whose production did not involve the actual abuse of children (such as written texts, drawings, paintings) will be excluded.

"In order to cover all acquisitions that in the end promote the sale of child pornography, even if they have not yet led to possession, all actions serving the purpose of procurement should be included, as well as actual possession. One exception will be actions which serve the exclusive purpose of fulfilling lawful official or professional obligations."

179. Various cases are pending in the courts in Hanover and Frankfurt. During the year, the Special Rapporteur also communicated with the Government of Germany concerning allegations of sexual exploitation of children for pornographic purposes. The Government's reply is given in the section on communications below.

180. A communication was sent to the Government of Switzerland on a related issue. This is also provided later in this report.

181. Many countries have now moved to criminalize not only the production and distribution of child pornography but also its possession. One source documents the various country positions as follows: 76/

Austria	Legal, but the law is about to be amended
Belgium	Legal
Canada	Illegal
Denmark	Legal
Finland	Legal
France	Legal
Germany	Illegal
Netherlands	Legal, but the law is possibly about to be amended
Norway	Illegal

Sweden	Legal
Switzerland	Legal
United Kingdom	Illegal (to possess child pornography)
United States	Illegal

182. In the reply of the Government of the United Kingdom of Great Britain and Northern Ireland to the Special Rapporteur's request for information, it is indicated that some child pornography is circulated between small groups of paedophiles. As for commercial pornography, "the police and customs consider that the Netherlands remains the single most significant source of child pornography imported into this country, although a lesser amount originates from Germany, Spain and USA". Now that it is an offence to possess child pornography in the United Kingdom, the police have also established an informal national register of paedophiles and intelligence relating to child pornography. However, the official stand is not yet favourable to extraterritorial extension of the law.

183. Eastern Europe also poses a challenge for the future. For example, during 1993 there was a report that a Swiss national was enrolling children in Hungary for the German market.

184. In Northern Europe, the market is particularly visible in the Nordic countries, and this is linked with paedophiles who visit developing countries to victimize children.

185. In a reply of the Holy See to the Special Rapporteur's request for information, emphasis is placed on the role of the family and the need to counter pornography.

186. North America has long been a major child pornography market. A source in the United States provides the following statistics for 1993: 25 indictments, 31 arrests, 39 convictions, 1 acquittal, 1 dismissal, 3 nolle prosequi, 84 seizures. 77/ A major problem now is that computer-linked pornography, such as the computer bulletin board system (BBS):

> "A BBS uses the common telephone service, a personal computer, a modern and appropriate communications software, to electronically send child pornography from one computer to another. The child pornography is produced by using digitizing and scanning equipment to turn child pornography magazines pictures or photos into a computerized picture on a hard or floppy computer disk." 78/

187. A major source of misuse of BBS for this purpose is Denmark. United States Customs have also found the following other sources: the Netherlands, Norway, Sweden and Switzerland. Stronger laws and law enforcement against computerized pornography are required, as well as closer international cooperation to counter the practice.

188. On a related front, Canada's recent legislative amendment to criminalize the possession of child pornography is welcome.

189. The problem also affects other parts of the world. Australian paedophiles are known to indulge in similar practices, and the Government's move to extend its criminal law extraterritorially should also cover child pornography. An Australian teacher of religion was fined in Brisbane in 1993 for importing child pornography involving a Filipino child. Another case concerning an Australian paedophile was pending in Thailand.

190. Asia has long been known as both a supply and demand market. However, there has been recent law reform on the subject. As noted above, the Philippines recently amended its law to confer greater protection on children in this situation. Sri Lanka is aiming to establish a more specific offence concerning obscene publications and indecent shows, and to broaden its Children's Charter to protect those who are under 18 years of age, by incriminating:

> "(a) Any person who hires, employs, uses, persuades, induces or coerces a child to perform in obscene exhibitions and indecent shows whether live or in video or to pose or model in obscene publications or pornographic materials or to sell or distribute the said materials ...
>
> (b) A parent, lawful guardian or any other person having the custody of a child who causes and/or allows such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by the above." 79/

191. Japan also needs to pay greater attention to its child pornography market. The problem is noted in the Government's reply to the Special Rapporteur's request for information as follows:

> "Recently the National Police Agency received a report that the manager of an adult shop cheated high school girl students skilfully, took videotapes of naked bodies and sexual activities of them and sold the tapes."

192. Other regions were also affected in 1993. For example, there was a report of child pornography in Israel, particularly pornographic videos sold in porn shops. 80/

193. Two global trends to accord greater protection to children were of note: the criminalization of the possession of child pornography and action against computer-linked child pornography.

IV. COMMUNICATIONS

194. During the course of 1993, the Special Rapporteur communicated directly with various Governments with regard to the issues under his mandate. These communications were prompted by reports concerning situations affecting children's rights that called for effective responses. The Special Rapporteur acted on the basis of prima facie evidence received from various sources. The cases presented involved individuals, groups and situations requiring attention and action on the part of the States concerned. The Special Rapporteur thanks warmly all the Governments which responded to

his communications. It is regrettable that several Governments failed to respond before this report was written. Effective follow-up is desirable, in the pursuit of children's interests.

Brazil

195. In August 1993, the Special Rapporteur communicated with the Brazilian Government concerning allegations of the exploitation of the labour of streetchildren and their abuse by law enforcement personnel. According to information received, on 23 July 1993, law enforcement officers killed eight streetchildren and injured others in Rio de Janeiro. This allegation followed a long list of other allegations noted in the Special Rapporteur's report on Brazil submitted to the Commission on Human Rights (E/CN.4/1992/55/Add.1).

196. In August 1993, the Brazilian Government replied as follows (excerpt):

> "As pointed out in your communication, this incident is not an isolated case. The Brazilian Government is well aware that the killings of streetchildren are not a new phenomenon and that certain elements of the police may be implicated in the action of 'death' squads. There is, however, a clear determination not to allow a curtain of silence to fall on these crimes and to break the impunity that some criminals seem to have enjoyed. The President of the Republic made straightforward statements about the subject and a serious investigation has been carried out by the National Congress. Measures have been taken to curb the problem and a number of individuals suspected of acts of violence against streetchildren have been caught ...
>
> "The measures so far adopted by the Brazilian authorities in the wake of the recent murders of streetchildren could be summarized as follows:
>
> The President of the Republic, accompanied by the Minister of Justice, travelled to Rio de Janeiro immediately after learning about the crime, in order to follow up with the State Governor of Rio the opening of investigations. The competent federal authorities have examined joint actions with the State authorities of Rio to ensure proper and rapid investigations of the killings and judicial pursuit of the culprits.
>
> Three policemen and a fourth man presumed to be the murderers are in prison awaiting trial by the Second Civil Court of Rio de Janeiro. The Judge has already accepted the indictment, made by the Public Attorney, of the four suspects for qualified murder. Further investigations of other suspects that may be implicated in the crime are pursuing.
>
> The commander of the Fifth Police Corps of Rio de Janeiro, to whom the three accused policemen were subordinated, was discharged of his functions.

The children that have managed to survive and have testified against the policemen are under the custody of the competent authorities of Rio de Janeiro, who vowed to protect them.

"The National Council for Children's and Adolescents' Rights (CONANDA) (has) recommended that:

The Government, at the federal, State and municipal levels, adopt emergency measures to implement the Statute of the Child and the Adolescent;

The States implement the commitments made at the meeting of the 'Children's Pact', held on 7 July, to allocate financial resources to programmes for the education, health and special protection of children, in order to attain the goals of the World Summit of Children, and that the State and municipal councils of the rights of children monitor implementation of these programmes;

The National Congress decide in the shortest delay upon the projects of law that make military police agents liable before the civil courts for any crimes they might commit, whether or not on duty;

Any emergency protective measures the Government may take in order to remove the children from the streets should not be compulsory but be based on an evaluation of the children's, the families' and the communities' needs."

Analytical comment

197. The response of the Brazilian Government is welcome. It is recommended that the Brazilian authorities tackle more seriously and on a sustained basis the root causes of the violence which has taken its toll among children on many occasions, as this is linked with the call for equity, income redistribution, family subsidies, and reallocation of resources to help children and their families. In this regard, many suggestions for reform were made in the Special Rapporteur's report on Brazil submitted in 1992, mentioned above (para. 195), and these should be borne in mind and implemented effectively. Of particular note is the need to improve the quality of law enforcement personnel and to ensure that they do not enjoy impunity for crimes against children.

Germany

198. In August 1993 the Special Rapporteur communicated with the Government of Germany concerning allegations that some German nationals were involved in the sexual exploitation of children, particularly through the production and distribution of pornographic material. The following gave rise to concern:

(i) It was alleged that various photo-magazines used children for pornographic purposes, including the series called "Madchen Sucht".

(ii) It was alleged that there were pornographic videotapes of children on sale, some of whom were from developing countries, including the series "Video Junge Madchen".

(iii) It was alleged that a book entitled "Kaufliche Liebe in Sudostasien" contained pornographic material.

199. In November, the Government of Germany responded as follows (excerpt):

"The Federal Government knows that children are being abused for pornographic photographic magazines and video films. Some of these photographs and videos are produced privately, often by members of the child's own family, and exchanged with other consumers of child pornography; others are produced on a commercial basis and rented out or sold. Many of these films and photos are made with children from the third world, either in the Federal Republic of Germany or in their native countries. The Federal Government utterly condemns this deplorable state of affairs. The universal protection of children is therefore an overriding concern of the Federal Government. The 27th Act amending the Penal Code, which seeks to combat more effectively child pornography and so-called child sex tourism, entered into force on 1 September 1993 with a view to improving the protection of children against sexual abuse.

"Combating child pornography:

"The scope of penalties for the distribution of products (including sound and picture carriers, pictures and other presentations) depicting the sexual abuse of children is increased: imprisonment for between three months and five years (section 184(3) of the Penal Code), in cases of commercial or group commitment, where the products depict an actual occurrence, imprisonment for between six months and five years (section 184 (4) of the Penal Code).

"The possession and procurement of child pornography depicting an actual occurrence, which have not been punishable to date, will carry a penalty of up to one year's imprisonment or a fine (section 184 (5) of the Penal Code).

"Following on from the ban on possessing and procuring child pornography the confiscation of such material is obligatory (second sentence of section 184 (7) of the Penal Code).

"The application of the effects of forfeiture pursuant to section 73 (d) of the Penal Code to commercial or group distribution of child pornography is envisaged (sentence one of section 184 (7) of the Penal Code), i.e. improved provisions for the forfeiture of profits if the circumstances suggest that objects have been acquired for or from illegal acts.

"Combating 'child sex tourism'

"Section 5 (8) of the Penal Code has been extended by cancelling the requirement that the victim be a German national, so that all offenses under section 176 (1) to (4), 176 (5) (2) and (6) of the Penal Code (sexual abuse of children) committed abroad by German nationals against German or foreign children will be covered. Originally section 5 (8) of the Penal Code was meant to protect German children, but foreign children abused abroad by Germans are no less deserving of protection ...

"In the Federal Republic of Germany the investigations and prosecutions of offenses is in principle the responsibility of the Lander. Experience shows that sexual attacks on children are resolutely prosecuted and punished.

"The Federal Government makes the following comments on individual cases:

(a) Various photographic magazines, particularly a series called "Madchen Sucht" (Girl seeks): The photographic magazine "Madchen sucht" is a so-called contact magazine published periodically by Barnas-Verlag, Moers. It is categorized as simple pornography pursuant to section 184 (1) of the Penal Code and may be sold only to adults. According to the information available to the Federal Criminal Police Office so far, the women depicted therein are of age. The magazine is used in the main by prostitutes offering their services. Pornographic texts are also published.

(b) Videos depicting child pornography, some of them from developing countries, in particular under the title "Video Junger Madchen" (Video of young girls): This video cannot be clearly identified by the Federal Criminal Police Office. Possibly the inquiring agency received a video distributed by the aforementioned publishing house in which women introduce themselves and create the possibility for contact to be taken up. This video, too, is pornographic within the meaning of section 184 (1) of the Penal Code. The impression is given that the women in the video are very young girls. However, investigations to date have uncovered no suggestion that they are minors.

(c) Book entitled "Kaufliche Liebe in Sudostasien" (Love for Sale in South-East Asia): The book "Kaufliche Liebe in Sudostasien" was published by Monika-Dulk-Verlag, Berlin and is currently being distributed by Orion-Versand, Flensburg. It deals in a pseudoscientific way with prostitution in Thailand, Indonesia, South Korea, Burma and Singapore, as well as Taiwan, the Philippines and Sri Lanka.

"Besides giving information about places where prostitution is rife and about the prices demanded, the book considers problems such as sexually transmitted diseases, crime, and AIDS, although they are greatly played down. The author claims that his information is based upon his

own experience of about 500 encounters with prostitutes in these countries. He also reports on child prostitution. The version of the book examined contains no pornographic pictures of children."

Analytical comment

200. Recent changes in German law to provide more protection for children both locally and extraterritorially are welcome. Greater attention should be paid to measures to implement the Programme of Action for the Prevention of the Sale of children. More coordination between the German police, INTERPOL and the police of the countries where children are allegedly exploited by German nationals is desirable. An objective and independent mechanism, possibly with the cooperation of the non-governmental sector, to identify the exploiters and abused children and to ascertain the true age of the children, is also necessary to accord protection and relevant remedies.

Honduras

201. In August 1993, the Special Rapporteur communicated with the Government of Honduras concerning allegations of illegal organ transplants which may have involved the use of children in the country. In particular, the allegations related to a report that a high ranking politician had stated that the body of a mutilated child had been found in the freezer of a lorry in the vicinity of Tegucigalpa. It was also reported that several hundred children had disappeared in the past few months and these incidents might have been linked with illegal organ transplants.

202. In October, the Government of Honduras responded to the allegations with a denial as follows (excerpt):

"Sale of human organs for transplantation

"This unlawful activity has been reported in the Republic of Honduras but complaints are unfounded. Investigations have revealed no rational evidence that such transactions, if such they can be called, are taking place.

"We assume that the source which named Honduras as one of the countries where this type of activity is practised based its accusations on the statements and complaints by Mrs. Rosario Goday de Osejo, a Deputy in the National Congress - ravings she herself was not able to support when President Rafael Callejas ordered a comprehensive investigation of the matter.

"To begin with, Mrs. Goday de Osejo was summoned to submit proper evidence and demonstrate who was implicated in what, but the result did not produce anything new and her claims remained mere suppositions. To look into the matter more thoroughly, since Mrs. de Osejo had mentioned clandestine hospitals where organs were removed for sending abroad later, investigations were carried out but found no evidence that such institutions existed. Moreover, in the opinion of the official in charge of coordination at the Transplant Unit of the Honduran Social Security Institute, such a thing is virtually impossible: Honduras does not have

the hospital infrastructure to remove organs and preserve them until they can be sent to a new destination, far less is this something that can be done secretly. He added that transplants cannot be performed indiscriminately, the donor and the recipient must be genetically compatible. All this gives the lie to the accusations and complaints by Mrs. de Osejo, whose challenge to the good faith of the judicial authorities was more likely to be politically inspired.

"Disappearances and abduction of children

"As in the previous case, the statements made by Mrs. de Osejo are the source of this complaint, and once again investigations have shown that the motivating factor in the cases reported is most likely to be family reasons, marital or personal conflict leading to the disappearances of some children.

"It is not true that the children in such circumstances number in the hundreds, and, as mentioned above, they have not been linked in any way with unlawful trafficking in organs.

"The refrigerator reported by Mrs. de Osejo turned out to be a figment of her imagination: none was found, far less any of the organs which were allegedly kept frozen."

Analytical comment

203. The response of the Government of Honduras is welcome. Future monitoring by objective and independent entities, possibly with cooperation from the non-governmental sector, is required so as to appraise the situation on a long-term basis. Close cooperation between local law enforcement personnel and INTERPOL is recommended so as to prevent abuses from arising.

India

204. In August 1993, the Special Rapporteur communicated with the Government of India concerning allegations that some Indian nationals were involved in trafficking children from Nepal. From the information received, large numbers of children, some as young as 10 years of age, appeared to be exploited sexually, particularly in Bombay. Of concern were the Tamang people of Nepal who had witnessed many of their children trafficked into India, a number of whom were reported to be HIV positive as a consequence of sexual exploitation.

205. To date, no reply on this issue has been received by the Special Rapporteur.

Peru

206. In August 1993, the Special Rapporteur communicated with the Government of Peru in relation to allegations involving illegal organ transplants of children. In particular, the allegations concerned the detention of a lawyer named Patrick Gagel who might have been involved in the disappearances of children linked with the sale of organs.

207. To date, no reply on this issue has been received by the Special Rapporteur.

Saudi Arabia

208. In August 1993, the Special Rapporteur communicated with the Government of Saudi Arabia concerning allegations of an illegal marriage between a Saudi man, named Y.H. Mohammed Al-Sagieh, and a 10-year old Indian girl, named Ameena. According to reports, the marriage took place in India in 1991 and the man was arrested while trying to board a flight forcibly taking the girl to Saudi Arabia. From information received, Mr. Al-Sagieh disappeared in August 1993 in India after jumping bail and has now reappeared in Saudi Arabia with the help of Saudi Embassy officials.

209. To date, no reply on this issue has been received by the Special Rapporteur.

Sudan

210. In August 1993, the Special Rapporteur communicated with the Government of the Sudan. It was alleged that in conflict situations, particularly in the area of the Nuba mountains, children from the south, such as those of the Dinka community, had been abducted held captive and subsequently sold in the North. The children were reportedly forced to work as domestic servants. The provinces of concern in the south included Darfur, Korkofan and Bahr-al Ghazal. Sales of children had been reported in such places as Safaha, Al-Dhein and Kadogli. It was alleged that some high ranking military officials were benefiting from the sale of these children

211. In October 1993, the Sudanese authorities requested more time to complete investigations. No further details have been provided by them to date.

Switzerland

212. In August 1993, the Special Rapporteur communicated with the Government of Switzerland concerning allegations that some Swiss nationals had been involved in sexual and other forms of exploitation of children, at times linked with abduction. The following instances gave rise to concern:

(a) It was alleged that a 35-year-old Swiss national domiciled in Argovie had confirmed in public in April 1993 the sexual abuse of a Filipino child and trafficking of children into Switzerland.

(b) It was alleged that two Swiss nationals, Rene Osterwalder and his companion Augusta, had been arrested in February 1993 in the Netherlands for abduction and sexual abuse of children.

(c) It was alleged that a Swiss national, Wolfgang H., had been arrested in Tegucipalca, Honduras, for the trafficking of children.

(d) It was alleged that some sects in Switzerland abused children for sexual and ritual purposes.

(e) It was alleged that child pornography was being distributed in Switzerland with the help of modern technology under such titles as "Suche Boy", "Baby Sex" and "Suche Muto".

213. To date, no reply on this issue has been received by the Special Rapporteur.

Thailand

214. In August 1993, the Special Rapporteur communicated with the Government of Thailand. The allegations concerned the forcing of children from Myanmar into prostitution, as a result of which they had become HIV positive. According to information received, the practice of trafficking women and children for the purpose of sexual exploitation from Myanmar to Thailand appears to be extensive. The most recent allegations concerned some 150 women and children from Myanmar arrested in brothels in the Ranong area. The women and children had been trafficked across the frontier, and had been sexually abused and exploited for the purpose of prostitution. Most were suffering from venereal diseases and were HIV positive. It was also reported that they had been charged on 17 July 1993 as illegal immigrants, with the likelihood of deportation to their country of origin. They were allegedly detained in crowded and insanitary conditions.

215. In November 1993, the Government of Thailand replied as follows (excerpt):

"1. Treatment of nationals from Myanmar forced or lured into prostitution in Thailand

"In cases when Thai authorities rescue nationals from Myanmar who have been forced or lured into prostitution in Thailand, the Public Welfare Department of the Ministry of the Interior, in cooperation with the Crime Suppression Division of the Thai Police Department, will deliver these persons to the Centre for Welfare and Protection of Women's Safety in the province of Nonthaburi for temporary protection and assistance. Following completion of legal and administrative procedures relating to the status of these persons in Thailand, the Ministry of the Interior will coordinate with the Myanmar Embassy in Bangkok to take back these persons in safety.

"2. The case of the 150 nationals from Myanmar rescued from brothels in Thailand

"Of the 150 nationals from Myanmar rescued by Thai authorities from brothels in the province of Ranong on 14 July 1993, 143 persons have been repatriated, while the rest remain in Thailand to serve as witnesses in legal proceedings against the procurers.

"As these nationals from Myanmar did not carry identification papers, their age could not be ascertained. However, from examination of their dental plates, none of them were found to be under 18 years.

"I wish to take this opportunity to reassure you of the Thai Government's continued determination to prevent and suppress the sexual exploitation of women and children, both Thai and foreigners, in Thailand, and the trafficking in persons."

Analytical comment

216. The response of the Government of Thailand is welcome. Attention is drawn to the need to protect children, irrespective of social or other origin, from abuse and exploitation. In this regard, the following recommendations put forward in the previous report of the Special Rapporteur (E/CN.4/1993/67) are pertinent to the situation in question.

"277. Migrant children prostitutes should be protected from harm, whether or not they have entered the country illegally. Help should be given to provide education and alternative occupations. Their safety and human rights need to be ensured, with proper monitoring, if they are to be sent back to the country of origin.

"278. No discrimination or inhumane action should arise against child prostitutes with HIV or AIDS. Support facilities, including subsidies, medical care and accommodation should be promoted."

217. There is also a need for objective and independent monitoring, possibly with the participation of the non-governmental sector, to ascertain the true age of the child, without necessarily reaching hasty conclusions on the child's age, and to establish proper safeguards for safe return to the country of origin.

Uganda

218. In August 1993, the Special Rapporteur communicated with the Government of Uganda concerning allegations of an incident which might have involved the sale of children. On 23 August 1992, a couple from the Middle East boarded an Egyptair flight in Entebbe bound for Cairo with some 30 Ugandan children in dubious circumstances. The children travelled on one-way tickets, and seemed to have come from rural communities in Uganda.

219. To date, no reply on this issue has been received by the Special Rapporteur.

Request to Governments to respond to communications

220. In all the above cases in which he has received no reply the Special Rapporteur would welcome an effective and expeditious response from the concerned authorities. This is all the more important as many lives are at stake, and effective action is required to protect all children, irrespective of social or other origin, from abuse and exploitation. Particular attention should be paid to the spirit of the Convention on the Rights of the Child and the Programme of Action for the Prevention of Sale of Children, to take adequate preventive action and provide relevant remedies.

V. RECOMMENDATIONS

A. General

221. The Special Rapporteur made a number of recommendations in his previous reports. The Commission on Human Rights, States and national and international organizations are invited to bear them in mind and facilitate their implementation and evaluation at the international and national levels.

222. Updated information on all areas of concern to this mandate should be collected consistently by all countries and sent to the Centre for Human Rights and relevant agencies and personnel for collation, analysis and dissemination. A national focal point should be identified and/or established for this purpose, and it should liaise effectively with the Special Rapporteur. Insufficiency of data should be overcome by the designation of a unit under the national focal point to gather relevant information and to make it widely available. Networking between governmental and non-governmental organizations and individuals on these matters should be encouraged.

223. More field visits to both developing and developed countries are essential to ensure the Special Rapporteur access to information at the local level. States are requested to assist this process. Visits to North America and Africa are planned in 1994: the States of these regions are invited to collaborate closely with the Special Rapporteur and facilitate his access to relevant information.

224. The States concerned should respond effectively to communications by the Special Rapporteur on behalf of children in difficulties. They should also initiate independent and objective monitoring at the national level to complement the work of the Special Rapporteur.

225. States should accede to all the relevant human rights instruments and implement them effectively. In particular, they should accede to the Convention on the Rights of the Child and should enforce it fully at the national and local levels. The national focal point mentioned above (see para. 224) should gather information on areas of relevance to these instruments and should forward it regularly to the international human rights mechanisms, including the Special Rapporteur, mandated to deal with child-related issues.

226. The Working Group on Contemporary Forms of Slavery should be strengthened so as to enable it to become more proactive. This should include providing it with the power to request comments from Governments and the ability to establish more extensive dialogue with all concerned entities, and the appointment of more experts from the field to ensure the sustainability and continuity of its work. The Voluntary Trust Fund on Slavery should be supported more concretely by Governments and concerned entities to enable it to operate effectively, with adequate resources, and to make it accessible to those working at the field level.

227. The Special Rapporteur's work is increasingly being adversely affected by technical and other constraints: support should be provided to ensure that he is able to carry out his mandate effectively. The Special Rapporteur invites close cooperation from the Committee on the Rights of the Child, the Special Rapporteur on the exploitation of child labour and debt bondage recently appointed by the Sub-Commission, UNICEF, INTERPOL, ILO, WHO, the Crime Prevention and Criminal Justice Branch of the United Nations and other concerned entities to reinforce the work he is carrying out under the mandate.

228. The Commission of Human Rights should engage in dialogue with all relevant financial and development aid agencies, including UNICEF, UNDP, ILO, UNESCO, WHO, the World Bank, IMF and regional and bilateral aid agencies, to raise issues of concern to this mandate and integrate them into the operations of these agencies. Economic structural adjustment programmes should be reassessed so as to cushion families and children against economic and social deprivation. The aim would be to link socio-economic development issues with the need to prevent violations of children's rights and to promote adequate resource allocations and responsive programming.

B. Short-term measures

229. The term "short-term measures" related to measures which should preferably be implemented in the next five years. Many of the short-term measures suggested should also be part of medium- and long-term strategies; they are not mutually exclusive and should be seen as part of a continuing process.

230. In the light of the International Year of the Family in 1994, the Commission on Human Rights should collaborate with all States and with national and international organizations to highlight measures needed to promote a positive nexus between the child and the family, and to counter child abuse and exploitation.

231. The Commission on Human Rights, States and national and international organizations should disseminate the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, and the Programme of Action for the Elimination of the Exploitation of Child Labour to all communities and ensure that there is effective monitoring and implementation of these Programmes at all levels, with adequate resource allocations. States and other concerned entities should translate the Programmes of Action into all national and ethnic languages and report annually on progress in the implementation process to the Commission on Human Rights.

232. States and national and international organizations are invited to bear in mind strategies of prevention, protection and rehabilitation in curbing the sale of children, child prostitution and child pornography. All three strategies involve short-, medium- and long-term planning, implementation and evaluation. Of the three strategies, the most immediate, in the short term, is that of protection: adequate laws, policies and enforcement can have instant impact on the situation, given the necessary political and social will. All countries already have laws which can be used to protect children, for example, the criminal law; they should be implemented in a more committed

manner. This is all the more significant because the scenario is that of criminality, and only through effective law enforcement will it be reduced in the short term. Realizable goals depend upon close coordination and adequate budgetary allocations between the national and local levels.

233. A key priority for action in the short term, with medium- and long-term implications, is in the area of prevention. States and national and international organizations should promote effectively anti-poverty strategies, the improved flow of information, universal primary education, community consciousness raising and mobilization, the satisfaction of basic needs, occupational opportunities and alternative forms of employment for families.

234. As a root cause of the exploitation of children is criminality, States and national and international organizations should broaden anti-crime measures; and community participation should be maximized to protect children through "community watch" programmes, including an alliance between village committees, other vigilance committees, religious leaders, local teachers and leaders, youth and child groups, professional organizations, the business sector and the mass media.

235. States and national and international organizations should address the issue of improving the quality of the police force, immigration authorities, judges, inspectors and other law enforcement personnel. Low pay and insufficient training in children's rights often results in poor law enforcement and corruption. The better of such officials need incentives and in-service training for quality performance. The worst should be identified and penalized for being part of the criminal system.

236. States and national and international organizations, together with the Commission on Human Rights, should initiate a "pro-child-anti-crime network" with INTERPOL, national police, immigration and law enforcement authorities, and local community groups to guard against child abuse and exploitation. Each entity in this network should have a cell dealing with the issues of sale of children, child prostitution and child pornography so as to promote consistent vigilance and the relevant action.

237. Increased collaboration between the Committee on the Rights of the Child, the Working Group on Contemporary Forms of Slavery, the Crime Prevention and Criminal Justice Branch of the United Nations, INTERPOL, other relevant entities, and this mandate is desired. Annual meetings between these entities should be promoted to ensure effective coordination and cooperation.

238. States and national and international organizations should highlight the responsibility of the customer in child abuse and exploitation through national and international campaigns. This implies, in particular, a call to incriminate customers of child victims of prostitution and those who possess child pornography.

239. States should encourage, through bilateral and other means, exchange programmes among law enforcement personnel, as well as related training programmes, to deal with transnational trafficking in children. Such programmes may, for example, entail stationing police personnel in other

countries to track the behaviour of one's own nationals where there is a threat to the children of those other countries. This can be facilitated by increased exchange of information, such as lists of known paedophiles and crime-linked data.

240. States and national and international organizations should take remedial action to help children who are abused and exploited. This may include judicial remedies, such as prosecution of abusers, and the provision of legal aid and assistance, and/or socio-medical remedies such as the provision of hospices, counselling and other support facilities. Facilities should be provided to help those with health problems, including HIV/AIDS. These may include medical and community facilities to help children and their families, as well as measures to protect them against discrimination and other harm. Emphasis should be placed upon family-based and community-based rehabilitation rather than State institutionalization.

241. In regard to adoptions, ratification of and accession to the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption by States should be promoted. Both the countries of origin of adopted children and the receiving countries should become parties to this convention and enforce it effectively. Accession to and implementation of the Hague Convention on the Civil Aspects of International Child Abduction by both the countries of origin of abducted children and receiving countries should also be strengthened.

242. Where children are trafficked across frontiers, States and national and international organizations should ensure that the true age of the children is ascertained by independent and objective assessment, preferably with the cooperation of the non-governmental sector. If they are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, they should not be treated as illegal migrants by the receiving countries but should be dealt with humanely as special cases of humanitarian concern. Upon the children's return, the country of origin should treat them with respect and in accordance with international human rights principles, backed up by adequate family-based and community-based rehabilitation measures.

243. States and national and international organizations should work towards closer monitoring of organ transplantation in order to prevent abuses. National laws should prohibit the use of children for organ transplants, bearing in mind the WHO Guiding Principles referred to above (para. 102). The medical sector and related professional organizations should be mobilized as a watchdog against abuses.

244. States and national and international organizations should discourage sex tourism, and the private sector, including the service industry, and the World Tourism Organization should encourage accountability in this regard. Peer group pressure in the private sector may help to reprimand those in the same sector who are involved in child exploitation. A code of ethics might be promoted, stipulating the industry's stand against child exploitation.

245. State and national and international organizations should ensure that the issue of child prostitution and other forms of child exploitation is raised more openly in the classroom so as to forewarn children of the dangers. This is particularly important at the primary level of education, as many children do not carry on their education to the secondary level for lack of resources, but enter the labour market under the impending threat of exploitation.

246. States should raise the age of recruitment to 18 and prohibit the use of child soldiers below that age. When child soldiers are captured in combat, their prisoner of war status must be respected. If they have escaped from recruitment, they should be accorded refugee status and accorded international protection. Dialogue with the military of both governmental and non-governmental forces is needed to curb the use of child soldiers. In promoting adherence to international human rights and humanitarian law instruments, safeguards are needed for all children in situations of armed conflict.

247. Regional organizations, including the Council of Europe, the European Union, the Organization of American States, the Organization of African Unity, the Arab League, the South Asian Association for Regional Cooperation and the Association of South-East Asian Nations, should set a specific agenda and establish a unit to monitor the exploitation of children as an urgent priority for their work. They are also requested to cooperate closely with the Special Rapporteur with respect to his mandate.

C. Medium- and long-term measures

248. The term "medium- and long-term measures" is used to indicate those measures which may need more than five years to initiate and/or accomplish. Many of the short-term measures discussed above will also need to be continued in the medium and long term. If the medium- and long-term measures set out below could be initiated and/or accomplished in the short-term, this would also be welcomed.

249. States should reappraise their development strategies so as to ensure greater equity, income distribution and resource allocations, including land reform and restructuring of budgets, for needy children and their families. As a root cause of child exploitation is poverty, this must be tackled with a sustained strategy both in national and international settings to ensure greater social justice for all.

250. A central registry of all adopted children and of all missing children should be set up in every country, and transfrontier exchanges of information should be promoted to trace and monitor the children and entities concerned.

251. States and national and international organizations should foster an integrated and interdisciplinary approach to tackle the root causes of the exploitation of children, bearing in mind the Programmes of Action referred to above. National laws need to be reformed to extend jurisdiction to cover offences of nationals against children in other countries.

252. States and national and international organizations should provide greater assistance to needy families and children in order to lift them out of the rut of poverty and economic deprivation which drive children into various forms of exploitation. Monitoring of parental behaviour, supervision by social service personnel, access to occupational facilities and alternatives, provision of family and child subsidies, and universal access to education are required to encourage changes of behaviour on the part of parents and to protect children.

253. States and national and international organizations should ensure that laws and policies cover not only formal employment but also less formal types of employment which give rise to child labour exploitation, for example, in the area of agriculture and domestic service, and that they are implemented effectively. A sustained strategy with not only legal but also other measures is required to eradicate bonded labour.

254. States and national and international organizations should promote the promulgation of laws and policies, where they do not already exist, to incriminate customers and intermediaries in the case of sexual exploitation and other forms of exploitation of children. The possession of child pornography should also be criminalized. The laws should have extraterritorial application.

255. States and national and international organizations should address the fact that new laws may be needed to counter new forms of technology used for child exploitation. Peer group pressure in the computer industry and the mass media could also be fostered as a watchdog against abuse by members of these sectors. Those who provide services in developing films, processing videos and facilitating mass communications should be requested to report instances of child exploitation to the law enforcement authorities.

256. The business sector, including employers' federations, trade unions and the service industry, should promote a worldwide strategy for child protection. This may be done by adopting a "Business Code of Conduct for Child Protection" which would put forward ways and means of preventing and eliminating child exploitation.

257. As the sale of children, child prostitution and child pornography are increasingly transnational, States should expand extradition arrangements, mutual assistance agreements and less formal types of inter-State cooperation so as to facilitate the transfer of alleged criminals to face charges in the country where the abuse has taken place and to facilitate the giving of testimony by children in an appropriate atmosphere.

258. States and national and international organizations should ensure that there are effective laws, policies and a medical code of ethics to prevent commercialization of in vitro fertilization and surrogacy. The close cooperation of the medical sector is sought to establish rules for these practices. Bilateral and transfrontier arrangements are needed to prevent "forum shopping" for services which give rise to abuses.

259. States and national and international organizations should foster changes to traditions which perpetuate child exploitation, not only through legislative enactments but also through establishing a broader educational base and through consciousness raising. Financial inducements may sometimes help to nurture constructive changes of behaviour that will benefit children.

260. States and national and international organizations should re-examine their development policies and programmes to integrate child development and protection more concretely into their implementation, and reallocate resources, particularly away from arms purchases, to social development, especially in relation to the protection of children's rights.

261. States and national and international organizations should promote a reorientation of incentives from the past emphasis on "economic investment promotion" for industries to the more urgent call for "social development promotion" with the child's best interests in mind. In this respect, incentives, such as tax exemptions, should be accorded more broadly to non-governmental organizations and community initiatives that invest in child survival, development, protection and participation.

Notes

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21/ Bangkok Post (16 November 1997), p. 13.

22/ E/CN.4/Sub.2/1993/31, para. 46. For the text of Republic Act No. 7610, see Philippine Human Rights Monitor, 10 (V) (1992), pp. 19-24.

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26/ CRC/C/20, annex VI.

27/ ILO, World Labour Report 1992 (Geneva, ILO, 1992), pp. 13-14.

28/ Ibid.

29/ Ibid.

30/ Hindustan Times (4 November 1992); Indian Express (12 November 1993); Letter of the Campaign against Child Labour to the Prime Minister of India (11 October 1993).

31/ The Times of India (5 February 1993).

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38/ "Factory children in Indonesia", ibid., pp. 15-7.

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Annex

LIST OF STATES WHICH REPLIED TO THE COMMUNICATION ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY CIRCULATED BY THE SPECIAL RAPPORTEUR IN 1993

Belarus
Botswana
Burkina Faso
Cameroon
Colombia
Croatia
Czech Republic
Egypt
Estonia
Germany
Holy See
Honduras
Iraq
Israel
Japan
Liechtenstein
Malaysia
Netherlands
Nicaragua
Norway
Papua New Guinea
Peru
Philippines
Russian Federation
Saint Lucia
Slovak Republic
Spain
Sudan
Sweden
Thailand
Tunisia